

LABOR-MANAGEMENT RELATIONS

HEARINGS BEFORE THE COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES

EIGHTY-THIRD CONGRESS

FIRST SESSION

PURSUANT TO

H. Res. 115

ON

**Matters Relating to the Labor-Management Relations Act
of 1947, and for Other Purposes**

PART 11

AND

APPENDIX

HEARINGS HELD AT WASHINGTON, D. C.
MAY 7 AND 8, 1953

Printed for the use of the Committee on Education and Labor



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON . 1953

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LABOR-MANAGEMENT RELATIONS

THURSDAY, MAY 7, 1953

HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met at 10 a. m., pursuant to recess, in room 429, House Office Building, Chairman Samuel K. McConnell, Jr., presiding.

Present: Representatives McConnell, Gwinn, Smith, Bosch, Holt, Rhodes, Wainwright, Frelinghuysen, Wier, Elliott, Landrum, Metcalf, and Miller.

Present also: John O. Graham, chief clerk; Fred G. Hussey, minority clerk; Edward A. McCabe, general counsel; Jock Hoghland, assistant general counsel; Russell C. Derrickson, chief investigator, and Ben H. Johnson, investigator.

Chairman McCONNELL. The hearing will be in order.

The witnesses for this morning are Mr. A. B. Kimball, executive vice president of the National Small Business Men's Association, and Bill Watkins, of the Watkins Motor Lines, Inc., Thomasville, Ga. I understand that Mr. Currin has been delayed and will be here very shortly—I have a telephone message to that effect. He is from Chattanooga, Tenn. Then, Mr. Robert E. Miller, of Miller's Dairy Farms, Johnstown, Pa.

Mr. Kimball, will you come forward?

STATEMENT OF ARTHUR W. KIMBALL, EXECUTIVE VICE PRESIDENT OF THE NATIONAL SMALL BUSINESS MEN'S ASSOCIATION, EVANSTON, ILL.

Chairman McCONNELL. Is it your thought, Mr. Kimball, to have these men testify right at the same time you do?

Mr. KIMBALL. If it is agreeable with the committee, sir, I will speak for the association and the other three gentlemen will give their statements and then the questions can be asked.

Chairman McCONNELL. We will be glad to have all of them at the table at the same time. I might say the program of procedure will be in your hands, Mr. Kimball. We will let you be the master of ceremonies.

Mr. KIMBALL. I have been in a meeting for 3 days and I have practically lost my voice, and so I hope you will bear with me, sir.

I will give the opening statement for the association.

My name is Arthur W. Kimball. I am executive vice president of the National Small Business Men's Association. I live in Evanston, Ill. My office is in the association's national headquarters, 2834 Central

Street, Evanston, Ill. We also maintain offices in New York and Washington, D. C. We have members in all 48 States representing 170 categories of business.

The National Small Business Men's Association was founded in 1937 to give small-business men a voice in national affairs and to help preserve free competitive enterprise in the United States.

The association holds national membership meetings each year. All members are eligible to attend these meetings. At each meeting a program is adopted by majority vote of those present to guide the activities of the association until the next membership meeting is held and a new program adopted. At each meeting a financial statement is rendered showing all income and giving an itemized statement of expenditures. We have just concluded our 1953 meeting, having met here in Washington on Monday, Tuesday, and Wednesday of this week.

At each of our national membership meetings, starting with the first one in Pittsburgh in September 1938 the members of the National Small Business Men's Association have gone on record, by the adoption of resolutions, to make labor laws equitable to labor, to employers, and to the public.

Our association has never been opposed to labor organizations as such. We recognize that wage earners have just as much right to organize for their mutual protection and advancement as have businessmen, doctors, lawyers, farmers, or anyone else. We do oppose, however, certain selfish, monopolistic practices of some labor leaders as inimical to the best interests of labor itself and to the destruction of the free-enterprise system.

On Monday of this week, May 4, in acting upon resolutions to guide our activities for the next 12 months, the labor portion of the program adopted reads as follows:

Resolved, That the Labor-Management Relations Act of 1947, the Taft-Hartley Act, be amended:

1. To ban industrywide collective bargaining;
2. That membership or nonmembership in a labor organization shall not be a condition of employment;
3. That when a strike is in progress and a picket line is used, all pickets must be employees of the company against which the strike has been called

At this point I would like to put in the resolution that was adopted after our statements had gone to press:

States to have power to regulate strikes and picketing in interstate commerce.

It is the consensus of our association that industrywide collective bargaining should be abolished and that bargaining should be limited to local area levels.

The right to work is just as fundamental and just as sacred as is the right to life, liberty, and the pursuit of happiness. Every American, by his being an American, and under the protection of our Constitution and Bill of Rights, has the unalienable right to work when and where he chooses, without being forced by his Government or any group to pay tribute to a private organization for the privilege of earning a living for himself and his family. There is no difference between a closed or union shop.

The recommendation that it be made unlawful for unions to use pickets other than employees of a company against which a strike has

been called stems from the employers who have suffered because of the importing of pickets when a strike has been called at their plant. In particular, I am citing the case of the Youngstown Steel Tank Co. of Youngstown, Ohio. Mr. C. E. Stenson, of this company, was scheduled to appear before this committee today, but due to illness brought on by the labor difficulties he has had during the past 12 months, his doctors advised against his making the trip to Washington.

The plant of the Youngstown Steel Tank Co. was closed for 9 months because they had asked for a bargaining election. At various times during the strike there were more on the picket line than the total number of employees in the plant, and at no time during all the months of picketing were there more than 3 or 4 of his employees on the picket line. All the others were imported from nobody knows where.

Prior to coming here, we asked, in a limited circulation of our members, for opinions on whether they thought the Labor-Management Relations Act of 1947 should be changed in any way. We received a great many replies and have taken excerpts from these letters relative directly to suggested amendments, and have made them into an exhibit which I offer here to be entered in the record if the committee so desires.

I have that, sir, it is an exhibit of these various excerpts from these letters from our members that I have just stated.

Chairman McCONNELL. Without objection it will be received.

(The statements referred to follow:)

EXCERPTS FROM LETTERS RECEIVED BY THE NATIONAL SMALL BUSINESS MEN'S ASSOCIATION, WASHINGTON, D. C.

The following quotations are excerpts from letters received from members in reply to our letter of February 16, 1953, requesting an expression of opinion on revisions to the Labor-Management Relations Act of 1947 (the Taft-Hartley Act).

These quotations represent a fair cross section of the view of the membership of our association which extends into every State in the Union and embraces 160 different categories of business:

FEBRUARY 26, 1953.

The union shop should be abolished, as I do not believe it should be necessary for any man to have to belong to a union to work. Union membership should be entirely voluntary.

Unions should be limited as to the amount of dues and assessments they can impose upon their members.

It should be unlawful for unions to collect a fee for so-called welfare funds on products produced, such as the assessment against the mine operators for each ton of coal produced and the assessment against record manufacturers for records produced. This can be carried to a point where unions will impose a fee or tax on every item produced, unless there are restrictions written into the law.

There should be a penalty for coercion of employees who join a union, as well as on the part of the employer who tries to prevent his employees from joining.

O. W. FARVER,

Blissfield Manufacturing Co., Blissfield Mich.

FEBRUARY 18, 1953.

We feel that nationwide bargaining should be outlawed and the Government should take over in a national emergency. That a man should not have to join a union in order to work for a living. That any strike should be voted on in secret ballot by the ones who are going to strike. That jurisdictional strikes should be

outlawed. In short we feel that a man should be free to work or not work and a company should be free to hire and fire as it pleases.

JOHN W. WITT,

Wood, Vest & Co., Inc., Charlottesville, Va.

FEBRUARY 25, 1953.

We would recommend bargaining be on local level only by men that are in the employ of the company. At the present time the union tells our men what they should have, and they are prohibited from making any suggestions or recommendations as to what they would like to have. We would call this compulsory arbitration of our men with the union.

We think that strikes should be prohibited in all plants, unless a strike vote has been taken and the majority of the members vote in favor of said strike. We believe that this should be further amended that an arbitration board be appointed by both parties, and their decision to be binding.

The health and welfare benefits must be taken out of the control of the union. All moneys collected for said funds should be under Government control and the men or the company should not have any control over same.

We believe that political assessments should be illegal, and we think that the unions should be restricted on the lines such as corporations are today. Why should there be any preference shown to either group?

We believe that all funds collected by the union should be accounted for the same as any other person or corporation. We believe that most of the rackets and goons who are employed by the union today would be eliminated. In our area here in St. Louis the health and welfare funds and initiation fees are not accounted for to anyone, and the unions should account for moneys received the same as any corporation or citizen does in this country. We cannot understand why there should be any special groups with preference to collecting money and disposing of it as they see fit.

FRANK D. JOHN,

Zonolite Insulation Co., St. Louis, Mo.

FEBRUARY 17, 1953.

Generally speaking I do not believe there is any necessity for changes in the act, certainly there should not be any change that would permit a closed shop. Our company is rather small, 30 employees, and we operate under a union-shop agreement, and have never had any real difficulty in arriving at settlements, and I believe the Taft-Hartley Act is responsible for this situation.

We are in favor of legislation prohibiting industrywide bargaining, as industrywide strikes are certainly detrimental to the welfare of the country, and no group of individuals in this country should have that much power.

THOMAS M. FITZGERALD,

Capitol City Supply Co., Inc., Indianapolis, Ind.

FEBRUARY 18, 1953.

Some fundamental changes I would suggest are, first, prohibit industrywide bargaining; second, make all strike votes by secret ballot and the voting judged by both the employer and the union; third, prohibit strikes in any public utilities.

ROBERT A. YOUNG,

Young Coal Co., Waterloo, Iowa.

FEBRUARY 18, 1953.

Industrywide bargaining and strikes should be made unlawful.

The antitrust law should apply to unions and corporations alike.

All union members of any local union should have an opportunity to vote on all questions. The determinations of small groups of members (often meeting in a small room at an unusual hour) should be declared by law to be of no effect.

Free and open meetings should be required of locals annually for election of officers. Appointment of officers and business agents by national or regional union boards and assessments levied by such boards should be illegal and of no effect.

Political expenditures of labor unions should be governed by laws governing corporate political expenditures. The individual member, just as the individual shareholder, should contribute directly to the cause of their choice. It should be unlawful for the union to so contribute from the union funds or assessment funds, as it is unlawful for the corporation to contribute from any such funds.

Sympathy strikes should be outlawed, definitely, as to employees of firms not themselves having unsettled demands in dispute.

Unions should be held liable for damages to property of employer or others inflicted by strike riots and, especially, by imported "goons" directed from some distant headquarters. Personal injury caused by similar actions should be union liability under law when the individual inflicting the injury cannot be identified, or when such individual proves judgment proof.

The employer and the union should have equal status as to freedom of speech at all times. In too many cases, union negotiators in disputes fail to present important information, vital to the men, to the members when calling for a vote upon acceptance, of a plan offered by the employer. It is often their personal knowledge that the company cannot meet the demands financially but this is not transmitted to the men for consideration, to their detriment.

J. SYDNEY LEE,

Simplex Manufacturing Co., Fond du Lac, Wis

FEBRUARY 17, 1953.

I do have a suggestion, and that is that all attorneys sitting in on negotiations, either representing labor or management, be compelled to take the loyalty oath. My reason for making this suggestion is that I have been informed that some attorneys for the Amalgamated Lithographers of America have had some communistic connections in the past. Therefore, I think that all people sitting in on any negotiations committee should be O. K.'d under this clause.

Another suggestion I have—and I think it is very important—that the union shop, or the closed shop, should not be written into this law.

E. F. WAGNER,

Federal Lithograph Co., Detroit, Mich.

FEBRUARY 18, 1953.

We would like to see the act amended so that employer arguments against joining a union would not be reason for NLRB nullification of a plant election in which a union lost.

The unions use every method under the sun to entice and force people to join. The employer must be very careful what he says to his employees or he will find himself facing a charge of unfair labor practices. The employer should have as much right to vilify the union as the union does the employer.

I. A. FAULK,

Faulk-Collier Bonded Warehouses, Inc., Monroe, La.

FEBRUARY 23, 1953.

Personally, I feel that the National Labor Relations Board should be abolished on the grounds that they are biased, labor controlled, stir up labor-management troubles instead of settling them, and are not worth their high cost to the American taxpayer for the purpose they render.

I am unalterably opposed to nationwide or industrywide bargaining, and I still insist that it is wrong to force any workingman into a union or to join a union to keep his job, no matter where or what type of work he chooses to do. The suggested changes, at least so far to the Taft-Hartley Act, appear to be merely trivial or fringe benefits for appeasement, and they do not begin to strike at the heart of the real troubles of unionism. I feel that no union or labor organization should be given any powers, privileges, or rights which are not given equally to business and made equally responsible. The workingman, too, should have his complete freedom of choice in the matter, and I hope that such changes can eventually be worked out under the Taft-Hartley law or another law which will bring about, most important of all, peaceful relationship between labor and management without the "goons" hanging on like parasites for their rakeoff out of the workingman's pay.

I am opposed to not only the closed shop but any form of union shop. If the unions don't render the service such that they can stand on their own feet, they don't deserve to exist, just the same as any private business enterprise.

R. S. PITTS,

R. S. Pitts Manufacturing Co., Hanover, Pa.

FEBRUARY 18, 1953.

To my way of thinking, the most effective manner in which to harmonize the relationship between capital and management is to adopt a provision in the Taft-Hartley Act which I have noted in the newspapers, especially this particular one, namely, the prevention of national strikes on industry level. If this can be done and if strikes can be confined to local areas, I am confident that our relationship with labor will be more satisfactory all the way around. The difference in living costs and transportation in the small agricultural areas as against the congested centers is much different and those labor leaders who live and operate in the larger cities are well aware of this fact; and if you wish to proceed with the greatest harmony, labor adjustments should be on the local level. Our industry has been the only industry in Pike County for the past 16 or 17 years and most all our men have gardens or live on farms. By this procedure of settling difficulties, the top labor leaders would be divided and scattered. To my way of thinking, the greatest truth in the world today is the large labor unions and their power to dictate to industry is not good for the country.

J. J. GORMAN,

Ohio Mineral Co., Zanesville, Ohio.

FEBRUARY 18, 1953

Certainly the Taft-Hartley Act should be revised to make it fair for both labor and management, and I think the following points should be brought out:

That labor should assume responsibility commensurate with their power.

That industrywide bargaining be outlawed as a monopoly.

That pension funds should definitely be set up as a separate trust beyond the reach of the employers and the unions.

E. V. SUNDT,

Littelfuse Inc., Des Plaines, Ill.

FEBRUARY 20, 1953

We believe that employees should be given a chance to vote for the formation of a company union by having a question automatically appear on the ballot, namely,

Do you favor a company union? ☐ Yes ☐ No

At the time the first attempt is made to unionize a shop, usually one or two men are the instigators and receive all their coaching from the labor organization in which they are interested. In a small corporation, it is highly probable that the majority of the older employees never had any ideas about forming a union and consequently don't know the mechanics of the law. The employer on the other hand for fear of being guilty of unfair labor practice charges hesitates to advocate anything. After the election (as in our case) the men express themselves, "If we had known how this thing works we would much rather have dealt directly with you (via a company union) rather than sit down with outside organizers who don't seem to understand our relationship with you." It is of course obvious that the union organizers certainly would never suggest the possibility of a company union.

H. C. SENKBEIL,

Eclipse Manufacturing Co., Sheboygan, Wis.

FEBRUARY 19, 1953.

The Taft-Hartley Act should be strengthened, not weakened, for this is what is feared judging from press reports and also President Eisenhower's remarks and statements.

Industrywide and nationwide strikes should and must be abolished.

The act must be strengthened so that workingmen may truly vote and vote according to their convictions and also speak up at meetings without any danger of their and theirs being slugged, maimed or their properties damaged.

Permit picketing, but definitely limited, only as information or as advertising. Forbid, by major penalty, the massed rough-use picketing.

Forbid the importing of mass picketing from other points, the armed goons usually led by what we personally believe are Communist leaders, they seem like a well-trained army.

Permit each and every worker who wishes to remain at work, or any worker who at any time wishes to return to do so, and guarantee each complete safety even if it must be enforced by Federal marshals, etc., if and when the local enforcement officers fail to do their duty as they should do it.

J. E. HEMMAN,

J. E. Hugo Hemman Co Chicago, Ill

FEBRUARY 24, 1953

It seems to me that in the revamping of the labor law, small business should, through its representatives, make a tremendous effort to acquire some protection from being pressured through the sheer power and weight of a strong international union. To accept the same wage and working conditions that have been imposed on the great business enterprises of the country, who through their size and importance can obtain price relief, whereas the small business cannot, might bring about disastrous results. Very often it becomes a question of accepting labor's demands or being shut down. I sincerely believe that if small business is to continue as a vital factor in our economy, it must be given some protection from the ruthless pressures of the powerful international unions.

Remember, even though the worker in the small plant is contented and likes both his bosses and his management, he has to do the bidding of the labor boss or be terrorized to cooperate in enforcing their demands.

I have no quarrel with collective bargaining, if it will be engaged in on a reasonable and intelligent basis. But when bargaining becomes a mere sham and a device for the union to press impossible demands, with a sign or else ultimatum, before its membership, then certainly we must admit small business is in jeopardy.

J. F. ROSS,

J. J. Towrek Manufacturing Co., Chicago, Ill.

FEBRUARY 19, 1953.

I would like to see the control over jurisdictional union disputes made stronger, as that, to me in my experience with union labor, is a bad thing both for labor and management. Now I think labor has had more than a 50-50 break under the Taft-Hartley law, and I think that was proven by our last national election. I would never be a party to busting up a good union, as I think they are very necessary to our economic welfare. However, they should be put under similar jurisdictions as corporations and compelled to give an accounting of all money collected from membership.

I think that any fairminded employer will agree that a good union is all right, but I am wholeheartedly opposed to union racketeers. I have had a lot of experience in employing all of the unions of the 10 mechanical trades in the construction industry.

JOHN F. KUHNS,

John F. Kuhns Lumber Co., Inc., Erie, Pa.

MARCH 13, 1953.

Should provide only employees involved should be allowed to form a picket line.

No other trades allowed to strike in sympathy. If manufacturers followed the same pattern, what would happen to the country?

Stronger freedom of speech for employers.

Voluntary wage increases by employer without consent of union.

Clarification of featherbedding.

A. B. CAMPBELL,

Campbell Products Co., Bensenville, Ill.

FEBRUARY 20, 1953.

Ban industrial side bargaining.

Investigate, then effectively legislate against the monopolistic practices of unions.

Clarify secondary boycotts and jurisdictional boycotts.

Provide some way so that the local bargaining is conducted by local officials, and committeemen, and not international representatives.

Provide some method of taxation against the large amounts of money collected and held by unions.

LESTER R. EDWARDS,

Northeastern Container Corp., Bradford, Pa.

MARCH 3, 1953.

There are only two main changes we would like to see enacted.

Have the law strengthened so that employers with legitimate cases of featherbedding could go to court and get a fair trial.

Destroy monopoly in unionism by outlawing nationwide bargaining. In other words, give to the Nation, the same protection against abuse by large and powerful unions that the antitrust laws give the Nation against abuse by large and powerful corporations.

ROSSELL MESSING,

World Color Printing Co., St. Louis, Mo.

Abolition of all forms of compulsory unionism.

Outlaw industrywide bargaining as being monopolistic.

Remedy the act's failure to clearly deny the union's special privileges that they, but no one else enjoy.

Keep in the act and strengthen the portion which states that strikers shall not be eligible to vote in representation elections.

Retain and strengthen the secondary boycott provisions of the act.

Make it compulsory that unions take secret vote on employer's last offer before striking.

Enforce rights of local unions to negotiate contracts independently of internationals.

Extend controls on featherbedding and picketing abuses.

Retain present definition of foremen as a definite part of management.

E. H. BRANNING,

The Wood Shovel & Tool Co., Piqua, Ohio.

FEBRUARY 20, 1953.

We do not believe unions should be allowed to bargain nationwide, or industrywide. They are entitled to no more monopoly than business.

We do not believe in mass picketing, or allowing a few men being able to shut down an entire industry, on account of other unions not crossing picket lines.

We do not believe union officials should be allowed a free hand in levying special taxes for elections or for any other purpose, or increasing dues without a unionwide secret ballot. Unions should also be responsible for any damage to property or personnel during a strike of any industry. No floating gangs should be allowed to travel from plant to plant and destroy property or personnel.

There should be no compulsory or closed shops.

Unions should be made to make regular returns and account for all receipts and disbursements, the same as any other business.

W. H. BENSON,

Benson's Bakery, Athens, Ga.

FEBRUARY 25, 1953.

Prohibition of industrywide strikes.

Outlawing of closed shop and union shop.

No interference of Federal laws with State laws in right-to-work and similar acts.

No restrictions of free speech on the part of the employer.

All present provisions of the Taft-Hartley Act should be retained.

ROBERT P. BONNIE,

Kentucky Color & Chemical Co., Louisville, Ky.

FEBRUARY 20, 1953.

Industrywide bargaining should be changed as it gives labor bosses far too much power.

GEORGE O. TEATS,

George O. Teats & Sons, Colorado Springs, Colo.

FEBRUARY 19, 1953.

Our experience indicates there is little, if any, difference in end effect between union shop and closed shop, and we are opposed to both because our experience has shown that both exercise privileges which are not permitted to employers. We think the Taft-Hartley Act should be amended so that it will nullify the Wagner Act and other related acts in their entirety. Unions should not be given the right to strike nor picket, because both are coercive measures against defenseless employers. Labor should have all rights as citizens and no more. Unions should be broken down to small organizations with jurisdictions not extending beyond the local level or territory. The strength of unions, as of now, is greater than any trust heretofore known. If trusts affecting commerce are prohibited, then most certainly the labor trust having control over such a great mass of employers and employees should also be prohibited.

Union officials should be elected by secret ballot of its membership and conducted by commissions representing labor, employers, and the Government. This would insure against lifetime continuance in office of union officials. The finances of union membership should be protected. Employers should be granted the right to exercise injunctions against labor when such labor attempts to enforce its domination by strikes, boycotts, and other unfair means.

A. M. DAVIS,

Illinois Minerals Co., Cairo, Ill.

FEBRUARY 24, 1953.

The matter of boycotts by union picketing should be definitely controlled. A situation arose here in Columbus at the Central Ohio Paper Co., which is non-union, but being unionized in some of their warehouses in other cities. The union did not boycott the company but boycotted the members in the home plant by placing pickets to stop truckdrivers from delivering merchandise. As the writer understands it, there is no provision of the law to prevent such action which could ruin any company where the practice is invoked. Similar loopholes should be plugged by a change in the Taft-Hartley law.

Furthermore, we, as well as every citizen of the country, should be concerned with the power usurped by the unions to control nationally basic industries: steel, coal, transportation, etc. When national bargaining is permitted it is absolutely unfair within the industries to compel an acceptance of any agreement made, by the large and small businesses regardless of their location. The public suffers as a result and competition within the industries is practically stalemated. The original idea undoubtedly was plantwise collective bargaining, but has developed into a growing power on the part of the unions which will force a situation very comparative to that of the labor government in England.

S. G. BROOKS,

The D. L. Auld Co., Columbus, Ohio.

FEBRUARY 18, 1953.

One of the most unfair and unjust situations which arise from time to time, when a strike is called by unions, is the so-called sympathy strike where a union that has no grievance whatever will call out their membership in order to try and force a settlement of a strike.

L. H. SCHWIERS,

The Neuman & Schwiers Co., Inc., New York, N. Y.

FEBRUARY 18, 1953.

The Taft-Hartley law and the Wagner Act should be repealed and should be replaced by a new labor law in which will be incorporated the following essential provisions:

Labor organizations should be compelled to organize under existing corporation law and should be subject to those laws, including income tax, corporate

tax, and other requirements of those laws as well as the provision of the anti-trust laws.

Industrywide bargaining should be prohibited.

Compulsory membership in the union should be prohibited.

Sixty- or eighty-day coolingoff periods should be required.

During the coolingoff period a secret ballot of the entire union membership of the plant involved should be taken under the supervision and whole control of an impartial organization, requiring the use of a single ballot and a single ballot box for both affirmative and negative votes. Balloting to cover a period of time so that employees of all shifts can vote.

Registration of union officials under the Communist membership acts should be continued.

The new labor act should clearly state that organized labor is a minority group representing only a small fraction of the total labor body in this country and that the law is written to protect both organized and unorganized labor groups from exploitation and intimidation.

Management should have the same rights of free speech and assemblage as labor union officials and management should be permitted to hold meetings with their employees on labor problems and factual data or bulletins for the use of the employees should be permitted.

Management should be permitted to decide and control the selection of and the number of apprentices they wish to employ.

Management should also be permitted to select, employ and to discharge their labor without regard to seniority, union membership or union approval.

Productivity should not be permitted to control labor rates, since this is primarily a function of capital investment and efficient planning and organization.

The new law should prohibit the Labor Department or the executive department of the Government from entering into a labor dispute in any way than for the general public interest and safety.

The new labor law should also prohibit shutdowns or strikes of Federal, State, municipal, and public-utility services. Arbitration of these disputes should be compulsory.

Sitdown strikes, secondary strikes, jurisdictional strikes and boycotts should be prohibited.

Mass picketing should be prohibited and picketing should not be permitted which would prevent access or egress of persons or employees or services not directly involved in the problems under dispute.

The unions should be held financially responsible for the acts of their members and subject to suit for damages resulting from vandalism, property damage, personal injury, etc.

FRANK C. COE.

Frank Campbell Coe, Philadelphia, Pa.

FEBRUARY 18, 1951.

That compulsory union membership is un-American and that each individual should have the right, free from compulsion, to determine whether or not he desires to belong to the union

That individual employees, whether or not members of the union, should have the right to bargain for themselves, free from all duress.

That the company should always be free from any requirement to bargain collectively with management or supervisory employees.

That industrywide bargaining creates monopoly and should be prohibited.

That there should be equal responsibility upon the part of the union and employer to bargain in good faith

That there should be returned to the States, by law, their former powers in the field of labor relations as against the present interpreted superior jurisdiction of the Federal Government in labor disputes.

That the NLRB should be stripped of its power to act as prosecutor, judge, and jury in labor disputes and should be shorn of its rights to legislate by fiat.

That complete freedom of speech for both the union and the employer in labor matters be maintained.

That Representative Lucas' bill (H. R. 2540) prohibiting employees of more than one competing employer to engage in a simultaneous work stoppage, or for competing employers to engage in simultaneous lockouts, should be supported.

That the small employers be given some support that will give them somewhere near equal bargaining power with the union.

There must be some corrections in the labor law if Congress is going to give more than lip service to small business. As things stand today, the settlements made in nationwide bargaining in critical industries set the patterns for wages, fringes, etc., that are crammed down the throats of small business, which, as competition returns, will threaten their survival.

C. M. LEWIS,

Budger Malleable & Manufacturing Co., South Milwaukee, Wis

FEBRUARY 19, 1953.

The law should include a provision whereby one union should not control an entire industry by one contract. Also, if one union does control the bargaining rights for any particular industry, the size of the union should be limited and the contracts written should have expiration dates staggered throughout the year.

Extend the non-Communist affidavit requirement to employers.

K N BERGGBAKEN,

Northern Sash & Door Co., Hawkins, Wis

FEBRUARY 18, 1953

I feel rather strongly that a man or small group of men through the process of industrywide bargaining can bring to a complete halt entire industries in the United States. The shutdown of the copper industry and the subsequent shutdown of the steel industry are examples of the fact that it can happen as long as industrywide bargaining is legal.

I feel that weighing the advantages and disadvantages of industrywide bargaining leads to the conclusion that it should be outlawed as a check against colossal abuse of power by a man or men not placed in the position of power by the public but by a very small percentage of the total population.

R H WILLIAMS,

Dy-Dee Wash, Inc., Philadelphia, Pa

FEBRUARY 23, 1953.

I do not think that the unions should be favored any more than business; we should all be at least on an equal basis, which we certainly are not at the present.

I particularly want to oppose any tampering with the secondary boycott section of the Taft-Hartley Act; the secondary boycott is the most pernicious weapon that can be used by a union to destroy the right of an American to work where and how he chooses.

No argument can be advanced in favor of secondary boycotts other than that they give unions powers of enforcement which should be in the possession of no group, either labor or management.

There is nothing in the inherent right of an American to live and work that says the fruits of his labor should bear a union label so that he can sell them.

We have been running an open shop for 18 years, our men are well treated and happy; they have many benefits that others do not have; but prior to the passage of the Taft-Hartley Act we were being seriously harassed by a deliberate secondary boycott, not to force us into any union but into one particular union; this would undoubtedly happen again if this section is tampered with; there are no doubt many similar cases throughout the country.

I earnestly ask that our association oppose any changes in the secondary boycott section of the Taft-Hartley Act.

EDWARD DOCHERTY,

Holyoke Wire Cloth Co., Holyoke, Mass

FEBRUARY 25, 1953.

There are some additions that must be made if we are to preserve free enterprise, allow small business to exist, and eliminate unions taking away individual freedom from their members. In order to do this we must eliminate industrywide bargaining, get bargaining back on a basis where the individual business can sit down and bargain with his union for wages and conditions that fit his particular business and locality. We should not be forced to swallow a contract that has

been set up by some outside group or a large company that in no way fits our particular picture.

H. T. MOLAND,
Moland Bros. Trucking Co., Duluth, Minn.

FEBRUARY 18, 1953.

We should have a law that prevents labor from having as great a control over our national life as has been the case in the past. Labor has its rightful place; so has capital; and so has the small business and the farmer. Strikes, while beneficial to labor, are detrimental to our country as a whole. Labor and all of us would yell mighty if the farmer went on strike and refused to raise food for our Nation. Yet, when it is turned around, labor expects the farmer and the rest of us to take it and grin. I think industrywide strikes should be banned. I think government should cease to use its influence either way in labor disputes.

THOMAS A. CLARK,
Clark Auto Parts Supply, Coleman, Tex.

FEBRUARY 19, 1953.

There should be no industrywide bargaining, and there should be no diversion of funds from their original intent. These two, plus the fact that there should be democratic elections for officers, seem to me to be very important.

Of course, the most important thing is that no one should be compelled to join or not join a union to earn a living or work where he desires. This brings up the question of closed or union-shop agreements, which are essentially un-American.

C. H. HOILES,
Freedom Newspaper, Inc., Santa Ana, Calif.

FEBRUARY 25, 1953.

We feel that there is a definite need for labor unions.

We also feel that their monopolistic grip on the world should be loosened.

Sympathetic strikes should be outlawed, especially during national emergencies.

Open shop is desirable in a democratic nation. Police protection should be granted to those needing and desiring employment.

Unions should be incorporated and held responsible for damages to business and employees.

Contributions should be made by all unions to a general fund to pay damages to individuals and businesses where union responsibility cannot be determined but where evidence is available to prove that union men are organizers.

Businesses should be allowed freedom of speech against organizers and unions and the right of property and personnel protection.

R. ALLEN PIERCE,
F. & P. Drug Store, Greenville, Tenn.

FEBRUARY 19, 1953.

It is my sincere conviction, based upon personal contacts with all classes of people, that if these matters could be voted upon by the people whose lives and economies and futures these laws govern that they would be overwhelmingly against—

Closed shop in any form or under any circumstances.

Industrywide bargaining.

Any further reduction in the workweek below 40 hours.

Any kind of strikes in defense work or in plants affecting civic welfare or health.

Secondary boycotts.

Restrictions on apprentices which prohibit our youth from gainful occupations. This should be one of their American heritages.

J. L. JONES,
Know Litho Co., Knoxville, Tenn.

FEBRUARY 18, 1953.

I would like to offer the suggestion that some provision be included in the Taft-Hartley Act to prohibit union monopoly. In my opinion, this is the chief complaint against the big national unions today.

WILLIAM H. BEATTIE,
Woodside Mills, Greenville, S. C.

ORCHARD PARK, N. Y., February 18, 1953.

As to our personal opinion, we do not believe harmonious relations between employers and employees can be expected unless both are controlled by identical laws. We believe heads of companies should be compelled to take the oath relating to Communist beliefs, the same as the heads of the unions. We likewise believe that unions should be prohibited from declaring nationwide strikes for identical wage rates just as manufacturers are prohibited from engaging in an industrywide lockout. A certain wage rate which is fully justified, say, in big urban centers is not always justified in smaller communities with lower cost of living. The net result is that large industrials like the steel companies having Government contracts can and do grant excessive union labor demands which cannot be granted by smaller concerns operating in a strictly competitive market. The result is that long, costly strikes ensue, sometimes resulting in the concern going out of business. You know of such instances, and we know of several in our immediate vicinity. We cannot expect a stable economy or an end of inflation unless we do something to control labor leaders who have been allowed to call a strike at their own pleasure and often without all our approval of their members.

F. B. FARRINGTON,
Xcelite, Inc.

MARCH 12, 1953.

The Taft-Hartley law contains a statement to the effect that where there is just cause for discharging an employee he can be discharged. The purpose of such statement at the time this law was passed in 1947 was to enable an employer to discharge an employee where just cause or reasonable grounds therefor existed. It was my understanding when the law was passed in 1947 that it was done for the express purpose of preventing the Labor Board to hold that an employee was discharged because of his union affiliation or activities and requiring him to be reinstated even though there was good cause for his being discharged. In other words, many cases arise where an employer has reasonable grounds or just cause for discharging an employee but the employee runs to the Labor Board with the complaint that his discharge was because of his union activity and the Board may require his reinstatement, even though good grounds for his discharge actually existed. This should now be corrected with a flat provision in the law that the Board cannot require his reinstatement if the reasonable grounds for his discharge did exist.

E. L. KENT,
Wickett Refining Co., Wickett, Tex.

FEBRUARY 18, 1953.

We firmly believe that the entire policy of coddling of labor and labor unions by the administration should cease and that employers should be able to hire and fire employees where efficiency and production are advanced hereby. Dictating of personnel policies by union leaders must stop. In our opinion, jurisdictional strikes are in direct violation of the antitrust acts and should be dealt with as such. We believe that Government's position between management and labor should be neutral.

Any modification of the Taft-Hartley Act, to further insure the above policies and unfasten the chains which bind management, is in order.

J. L. ZOLL,
Radio Supply Co., Inc., Norfolk, Va.

FEBRUARY 17, 1953.

In Iowa, we have a no-union as well as no-closed-shop law, but in many instances in Iowa under the free-speech provisions, labor unions have carried placards in front of businesses where they had a contract but where nonunion as well as union people were employed in accordance with the requirements of the law. These placards say, "This firm employs nonunion help" and such a demonstration is considered by other unions to be a picket line and they then refuse to cross that line. The result is most effective coercion. There should be in the Taft-Hartley Act, in my judgment, a provision making it illegal to picket except in the event of a union legal labor dispute.

ROBERT H. WALKER.

Boyd, Walker, Huiskamp & Cocannon, Keokuk, Iowa.

FEBRUARY 21, 1953.

I believe management should be required by law, to arbitrate with their employees, but with no one else, which would outlaw industrywide bargaining.

I believe the closed shop is strictly unconstitutional and should never be tolerated.

W. TREHEARN,

Trehearn's Department Store, Crescent City, Calif

FEBRUARY 19, 1953

Restrict or curb the unreasonable and unfair powers and authority of union leaders over the members of the unions. The members of the union have little or no voice in directing the affairs of their union. They do not know, in many instances, what becomes of the moneys they pay into the union treasury as membership dues or initiation fees, and they are forced to maintain their membership in the union through coercion or threats of violence to their own person or their families or their property. This constitutes a very bad situation which in the best interests of all concerned should be corrected.

Provide that a strike could not be legally called by the union leaders until and unless the issue of going on strike had been specifically approved by properly and governmentally supervised secret ballot by at least two-thirds of the total number of employees of the business or plant to be struck and to prohibit anyone voting on the issue of such an election except the employees of the business or plant to be struck.

Make it illegal, above everything else, to carry on industrywide bargaining or to call an industrywide strike. It would be a great contribution to the national welfare and assist to a more harmonious employer-employee relationship if the matter of collective bargaining or the issue of going on strike could be legally restricted to a local or plant basis. The present powers of national union leaders to call an industrywide strike is a terrifying thing to contemplate if and when in the hands of bigoted, selfish, or dangerous men or men with no regard for the national interest or the best interests of all the people of the Nation. Without doubt, this particular matter will be a very controversial subject to deal with during these hearings, but the need for correcting the present situation is so compelling that the issue should not be dodged merely because it may be controversial.

J. H. MOORE,

Marshall-Wells Co., Duluth, Minn.

FEBRUARY 23, 1953.

I definitely feel that the Taft-Hartley law should be strengthened. I think all unions should be made subject to the antitrust laws, as here in St. Louis a man cannot work in the building trades without membership in some union. If there ever was a monopoly the building trades unions here have one.

I definitely feel that industrywide strikes should be outlawed. As it is now there is too much potential power in the hands of some of the labor leaders that can cause too much serious trouble in our national economy, not to mention the individual hardships of labor members who do not want to strike and yet they do not dare express themselves in union meetings.

ALISON B. IDESON,

The Ideson Co., Inc., Kirkwood, Mo.

MARCH 19, 1953

We have a fine group of union printers and relations with them are fine and they are doing a job and don't want to strike when let alone by the bosses. They are getting \$2.65 per hour which is a lot of money for a small weekly newspaper to pay. Would like to see law strengthened so employer may negotiate with his own employees and not have his offer that they are willing to accept voted down by a large number of printers from other larger cities

NEIL R. MURRAY,
El Monte Herald, El Monte, Calif.

FEBRUARY 19, 1953

We think that the union-shop provision in the Taft-Hartley law should be eliminated and that industrywide bargaining should be done away with

FRANK W. COX,
Eureka Lumber Co., Washington, N. C.

MARCH 17, 1953.

We are of the very definite opinion that industrywide bargaining should be prohibited. We regard organized labor as the greatest monopoly existing in our country today. We see no justification for allowing labor to establish a monopoly when the operation of the Sherman antitrust law bars monopoly in business, and most effectively

In our opinion, the ideal procedure for the encouragement of collective bargaining is for management of an individual plant to deal with the employees of that plant, as only through such procedure can the desired spirit of friendship, mutual understanding and cooperation be established. We see no rhyme or reason for permitting a few labor czars to hold the power which they hold over the very lives of the men and women who make up the ranks of organized labor. We would be glad to see the Sherman Antitrust Act made applicable to labor as it is to business

Then, we would like very much to see the union shop barred as in the closed shop. The union shop is nothing other than the closed shop. We see no justification under the American flag for a man or woman to be denied the right to work and earn his or her daily bread unless he or she pays tribute to some labor organization. The right to organize and bargain collectively is the law but no man or woman should be forced to join a union against his or her wishes in order to earn a living. If this statement is untrue, then our Constitution should be changed.

E. J. McMILLAN,
Standard Knitting Mills, Inc., Knoxville, Tenn.

FEBRUARY 24, 1953.

I refer to two things which I think would do away with many of the evils of trade-union practices.

First, to prohibit mass picketing. Limit the number of people that can be on the picket line and the distance those people must be apart.

Second, limit the picketing to members of the particular union involved. Do not allow them to bring in mobsters and gangsters and sympathizers of one kind or another to join in their picketing.

Picketing had always been, theoretically, a means of persuading people not to work. It was degenerated into preventing instead of persuading.

E. K. CAMPBELL,
E. K. Campbell Co., Kansas City, Mo.

APRIL 23, 1953.

For over 30 years, I have operated the Cortum Lumber Co. at Bristol, Tenn., and have owned it for about 20 years. It is a small woodworking plant normally employing approximately 100 to 130 men.

Since the enactment of the Wagner Labor Act, we have had considerable labor unrest. The Taft-Hartley law has given us but little relief, if any

April 30, 1952, we had a strike which lasted until May 23. Nothing was won by either side. Both the men and ourselves lost through idleness.

The mill is small enough so that we are in close touch with the men. We believe that a great majority were not in favor of the strike.

We thoroughly believe that an amendment to the law requiring a secret strike ballot taken by an impartial judge, somewhat similar to our election laws, would end many of our difficulties.

RALPH G. SPIEGLE,

Ralph G. Spiegle & Co., Philadelphia, Pa.

Mr. KIMBALL. We have also asked three of our members, Mr. Bill Watkins, Watkins' Motor Lines Inc., Thomasville, Ga.; Mr. Robert E. Miller, Miller's Dairy Farms, Johnstown, Pa.; and Mr. Waddy G. Currin, the Currin Co., Inc., Chattanooga, Tenn., to be heard by this committee today. Each of these gentlemen has had first hand experience under the Taft-Hartley Act. We have asked each of these men to tell you of their experiences and their ideas concerning changes they think should be made in the law.

Thank you, Mr. Chairman, and now these gentlemen are here, and whichever one you would like to hear first.

Chairman McCONNELL. That is up to you.

Mr. Miller, will you proceed?

STATEMENT OF ROBERT E. MILLER, JOHNSTOWN, PA.

Mr. MILLER. My name is Robert E. Miller. I live at 2322 Franklin Street, Johnstown, Pa. I am the sole owner of Miller's Dairy Farms, whose acreage comprises approximately 350 acres. I am also owner of Miller's Real Estate Co. of Johnstown, Pa. These businesses were formerly affiliated with the former Miller's Dairy, which I owned up until August 1, 1950. My present office address is 2338 Franklin Street, Johnstown, Pa.

In response to your consideration of labor legislation, in which you are seeking recommendations to be made in the changing of the Taft-Hartley Act, I should like to give you my experiences and my views. However small they may seem, they are very important to the small-business man and in order for you to have a complete understanding of this particular situation, I will give you a brief synopsis of our business experience.

This dairy business was started in 1892 by my father, S. K. Miller, and has always operated under the name of Miller's Dairy since that date and daily deliveries were originally made from farm to customer by horse and wagon, in spigot or dipper method. When I became of age, I acquired the dairy and started to enlarge by buying milk from neighboring farms.

In 1926 we started bottling the product and in 1928 started putting in a pasteurizing plant and moved into a larger building and again in 1936, we enlarged the plant and put in equipment large enough to double capacity and by 1948 we had plant equipment and plant capacity as large as the largest in Johnstown. We installed this plant equipment in anticipation of a continued natural growth such as we had experienced in the past. We now had 15 milk routes, 1 wholesale ice-cream route and 2 large dairy-products stores and restaurants.

At this particular stage, we purchased with liberal credit terms, a village of 25 houses, located within a half mile of our dairy building, to house employees who were living 10 or 15 miles from the plant. Rents received were lowest in the city.

We now had approximately 78 employees on the payroll. Until that time we had the cooperation and good-will of our employees. The union saw that there was "a ripe plum to be plucked," by organizing our men and collecting dues from these employees. In this campaign to unionize our employees, almost overnight we became a slave driver and a profiteer on labor by their accusations. We then had an election supervised by the Labor Relations Board, which we won by 1 vote in the dairy stores and lost by 1 vote in the dairy-workers division.

We then were forced to sign the same contract our large competitors were operating under and production fell both in plant and routes, until a profit could no longer be realized, and in August 1950, we merged with a company a little larger than ourselves, with the condition agreement that this company at their option could acquire sole interest in our business. Our larger machinery was then moved into their plant and the entire volume of both plants was processed and bottled with this same machinery and is still doing the job nicely with the same amount of help. Which proves that we were not slavedrivers or profiteers as accused in the union's attempt to organize.

Now the company with which we merged had been organized probably 10 years previous and had the poison propaganda worked out of their system, because the union was then collecting dues from practically everyone of their employees and it was no longer necessary to spread that propaganda.

This outline of facts involved in the organization of our plant, is submitted to your committee, because the National Small Business Men's Association considered our case one that might be helpful for your consideration.

While we were experiencing and suffering this great change, we were not alone, because I can recall of several other concerns whose integrity was just as honorable as ours, fallen by the wayside and discontinue business for the same reason. This tremendous wealth which is being accumulated by the unions must not be allowed to continue without being taxed and without being regulated, the same as any other wealth accumulated by an individual or a corporation.

According to my conception of this situation, small business cannot survive with industrywide bargaining and wage scales or even citywide. Our experience shows that and commonsense reasoning will also show it. Also small business cannot afford to trust big business to write into that law the things that are necessary to maintain and preserve small-business interests. Because big business realizes that every time a small business fails, it is a windfall for them, and that, I believe, is one reason why big business was content to go so long as it has with the present provisions of the Taft-Hartley Act.

When unionization takes place in small-business concerns, they must have a longer period of time to adjust themselves to the terms of the contract and this is especially necessary when small-businesses' products are subject to price control or rather to Federal and State control.

It is now very evident that small-business organizations have the tremendous burden of showing our Government and big business and the unions that legislation must be enacted to preserve, protect, and encourage and probably even segregate small business from big business or otherwise socialization will be inevitable.

In summarizing other important considerations for small-business men, we should like to briefly state the following pertinent facts:

1. Elections should be held to determine whether the majority of men want to be represented by a union. These should be chosen locally by union and management.

2. No closed shop or forced unionization on the minority by the majority.

3. Minority protection and no high pressure or threats to those who peacefully pursue their work.

4. Very limited seniority rights, especially in supervisory capacity.

5. Picketing confined only to employees of company involved.

6. If unions want to represent men, they should be responsible for every collective act. Wildcat strikes, sitdown and slowdown strikes are usually fomented by labor leaders or radicals who do not want to assume responsibility.

7. Congress, in formulating this law, should keep constantly in mind to preserve the rights of individuals at all times.

In conclusion, we are not adverse to unions if they respect and preserve the rights of the individuals, but under present union operations, the individual's right has practically become extinct. Hundreds of people say today, "I am not in accord with the union, but I must join it to get a job or to keep my job," and that is even worse for the small-business employee because he shows by his action that he is more interested in maintaining individualism when he works for the small-business man, rather than for the large-business man.

Pension and health plans must also be given some consideration, so that the small-business man will at least have some applications by individuals and so that he will not be induced to go to larger institutions for his daily earnings.

We hope your committee can be guided by this bitter experience and that of many others into creating a formula to have written into the Taft-Hartley law the provisions to protect and encourage the small-business man and the individual, and may you be given the knowledge, the courage, and the strength from on High to preserve for the individual that which God has intended for everyone.

Chairman McCONNELL. I wanted to clarify one thing, No. 4, "Very limited seniority rights, especially in supervisory capacity." What do you mean by that?

Mr. MILLER. Well, someone who has been with a particular company for a while and has only a limited amount of ability, if he is there long enough and somebody in a supervisory capacity moves out, he is eligible to come up and make application for that job whether he is capable or not.

Chairman McCONNELL. What you mean, then, is that seniority should not be the controlling factor in getting supervisory positions. Is that what you mean?

Mr. MILLER. That is correct.

Mr. KIMBALL. Mr. Watkins, I think you are next.

STATEMENT OF BILL WATKINS, PRESIDENT, WATKINS MOTOR LINES, INC., THOMASVILLE, GA.

Mr. WATKINS. My name is Bill Watkins. I live at Thomasville, Ga. I am president of Watkins Motor Lines, Inc., who are irregular route common carriers handling specialized commodities, primarily fresh and frozen foodstuffs, such as frozen citrus juice, fresh dressed

of frozen poultry, and so forth. Our main office is located on Cassidy Road, Thomasville, Ga. We also maintain offices at Chicago, Ill.; Waterloo, Iowa; Atlanta, Ga.; Canton, Ga.; Dade City, Fla.; Jacksonville, Fla.; and New Castle, Del.

I have operated this company since 1939. Our company employees are nonunion and since all of our drivers are actually partners in the business, I do not believe that they will ever consider becoming union members, as the drivers own the tractors and the company owns the trailers, and they participate in a division of the income from each individual truck.

In your consideration of labor legislation, I believe that some of the difficulties our company and its employees have had with the AFL in various cities throughout the Midwest and East are worthy of your consideration. I will advise you here of a few of the many, many high-handed tactics used on us by the unions, both by members and representatives.

For many years our company has been forced by the AFL chauffeurs and teamsters unions in New York City to allow a member of their union to ride in the truck with our nonunion driver over the streets of New York in making deliveries from our truck of the food commodities to the wholesalers to whom we deliver. For years we have been faced with this problem in New York: That if we fail to have a unionman on the truck the warehouse and jobbers employees to whom we were to deliver would refuse to accept the merchandise from the hands of our nonunion driver. In short, we are boycotted and our delivery service can only be completed by the hiring of a unionman to ride in the truck with our nonunion driver and assist in the delivery. In most cases driving from the Holland tunnel to the point of delivery and making the delivery consists of about 3 hours, for which we have to pay both the unionman for a full day's work and our regular employee.

These tactics of the union in New York have gone on for so long that we had come to accept them as an established practice, but in the past few years this practice has spread so rapidly to other parts of the Nation that it is our fear that the practice may become so broad that a nonunion truck company such as ours could be boycotted from existence. It is this fear that brings me here to tell you these facts. You will please note that this practice has spread even into the smaller communities such as Rochester, Minn.

On October 23, 1952, one of our drivers, a nonunion member, was dispatched by our Waterloo, Iowa, office to Rochester, Minn., to load milk and cream for delivery to St. Petersburg, Fla., in response to a call for a truck from Rochester Dairies. Upon arrival at the plant the driver inquired of the shipping clerk as to whether he should back in for the load. He was then told that unless he was a member of the AFL Local 874 at Rochester he would not be allowed to load at this plant.

After considerable discussion between our nonunion driver and the shop steward at Rochester Dairies, our driver finally decided that the only thing to do, since he had driven 150 miles up from Waterloo to get this load, that he would have to surrender to their demands and join up at a cost to the driver of \$32.50 for initiation fee, which will do him no good anywhere except to pacify this local which allowed him to load and proceed.

On February 22, 1953, another of our nonunion drivers was dispatched again to Rochester Dairies at Rochester, Minn., in response to their call for another truck to haul a load of cream to St. Petersburg, Fla. Upon arrival this driver also was told that he would have to join the union before they would load his truck. This he flatly refused to do and, as a result, after several phone calls between the Rochester Dairies and our agent at Waterloo, Iowa, the truck had to come away without the load.

In neither of these cases was it the Rochester Dairies who insisted on the unionman, but it was the shop steward at the dairies who would not allow the loaders who were members of AFL to load the truck unless our driver was also a member of local 874.

On February 16, 1953, another of our nonunion drivers presented for delivery a load of frozen citrus juice from Dade City, Fla., to the warehouse of Wrigleys Stores, Detroit, Mich. Upon approaching the truck warehousemen as to where to place the trailer for unloading, he was told he would have to hire a local union man to unload or else join the Detroit local of the chauffeurs and teamsters union himself.

His joining would have involved a higher expense for initiation fee than to simply hire a union member. So, after being fully convinced that the warehousemen would not receive this load unless he conformed to their demands, he employed a unionman for a 2-hour job and we were forced to pay for a full day's work at \$16.05, our nonunion driver standing idly by.

On February 26, 1953, another of our nonunion drivers attempted delivery to Morris & McCluan at Pittsburg of a load of poultry originating at Gainesville, Ga. He was parked in the street at 7:30 a. m. awaiting opening of the consignee's warehouse. About 7:45 the warehouse foreman arrived and opened up.

Our driver then backed up to the dock and when he had backed in he was told by the receiving clerk that he would not be permitted to put the poultry onto the dock which is our usual duty in delivery under the terms of our uniform bill of lading. Our driver was further told that if he was going to effect delivery he would have to hire a member of the local teamsters union. This our driver hotly contested, for as in the case of all our drivers he was an independent trucker hauling under long-term contract to our company and he wished to avoid the unnecessary expense.

After about an hour of controversy, he consented to their terms and the local shop steward made a call and a union member came immediately and unloaded the truck. The unloading took about 2 hours, but for this 2 hours' work of stacking the poultry onto the warehouse floats we were forced to pay this union man \$15.86 which was for a full day's work. The receiving clerk at the warehouse saw to it that the unionman was paid prior to signing for receipt of the load.

On April 24, 1953, one of our trucks was sent to pick up a load from Kahn Packing Co. at Cincinnati for delivery at Boca Raton, Fla. Arriving at 7:30 a. m. the driver was directed as to where to back up for loading. When he backed in the driver was told by the shipping office that if he was not a member of the local AFL teamsters union in Cincinnati he would not be allowed to load the truck until he joined or either employed a union driver to put the load on for him.

After refusing to do this, the presence of his truck was simply

ignored and after about an hour of this he reapproached the shipping clerk and consented. Thereupon the shop steward then called a man from the local who arrived in about 15 minutes and upon his arrival the loading began which required 4 hours. In this case, we had to pay only for the actual hours worked, but our driver had to stand idly by and we paid both our driver and the regular unionman all because our driver was not a member of the union.

These are only a few of the many instances that are occurring to us weekly. They are so numerous that we do not even keep records of all. I have selected these from the many cases in the past 6 months.

You will note that this practice is spreading so rapidly that it could become universal and even if our men decided to join a union, according to present-day practice—if they were members of the Atlanta, Ga., local—they would not be allowed to unload in these various cities.

This short outline of difficulties involved in trying to deliver perishable foodstuffs is submitted to you because we are a small company and we operated over a broad area, and these circumstances are typical of those occurring to many other small food haulers who carry food in irregular operations to meet the fluctuating supply and demand. These difficulties are primarily restricted to only small carriers who do not have employees in the cities where they deliver, as our business fluctuates so greatly along with the demand for foodstuffs and our deliveries are spasmodic and irregular to any given city.

From our experience, we strongly recommend some type legislation which would prevent the labor racketeering that is now going on against us. Some form of legislation which would make the union responsible for such racketeering practices and boycotting our non-union drivers should be enacted and in such strong form as to protect us from this ever-growing menace that, if allowed to increase, will completely eliminate a driver's right of choice as to whether he desires to join a union or not, and if he was a member of a southern local and this practice continues to spread the cost of maintaining membership in all the locals where he would go from time to time would be prohibitive and extremely unjust.

I urge that some form of protective legislation be enacted.

Mr. KIMBALL. Our next and final witness is Mr. Currin.

STATEMENT OF WADDY G. CURRIN, VICE PRESIDENT, THE CURRIN CO., CHATTANOOGA, TENN.

Mr. CURRIN. My name is Waddy G. Currin and I reside at 1711 Golf Street in Chattanooga, Tenn. I am vice president, treasurer, and general manager of the Currin Co., Inc., which is located at 1208 Carter Street, Chattanooga, Tenn. The Currin Co. has been in existence for a period of about 26 years. I have been connected with it on a full-time basis for the past 4½ years and was familiar with the company's operations for a considerable period prior to that.

The Currin Co. is engaged in the selling and installation of many types of flooring and acoustical work, as well as the selling of building specialties. Much of our work is done as subcontractor on the construction of new buildings. Of course, we also do many small jobs for individuals and companies when we deal directly with the owner. Our regular employees consist of 20 carpenters and 4 hod carriers. All are unionmen.

The chief difficulty our company has had, and the one which apparently will cause us the most trouble in the future, is the question of jurisdictional disputes. I realize, of course, that the Taft-Hartley Act has provisions relative to this problem, and that an employer may theoretically hire the workmen he chooses. There are exceptions, however, recognized by the act, and the Board seems to have enlarged some of these.

In the building industry, these questions can get particularly complicated, and because contracts are generally let on competitive bids, it becomes extremely important for the contractor or subcontractor to know what trade he will have to use for a particular job.

Let me tell you about one job we had which will, I believe, illustrate what can and does happen. You are all familiar, no doubt, with the Arnold Engineering Development Center in Tullahoma, Tenn. It is a large wind tunnel. The Robert E. Maxey Construction Co., of Lubbock, Tex., was awarded the contract to build the administration and engineering building and the model shop.

In January of 1951, our company submitted bids to install acoustical materials for the administration and engineering building. One contract, amounting to about \$40,000 was awarded to the Currin Co. on the basis of its bid, and later, when an addition to the building was planned, a separate contract of some \$27,000 more was entered into. This latter contract was executed in July of 1951.

Now I would like to point out at this time that the type of acoustical material to be used is known as perforated metal-pan acoustical tile. This material comes in sections 12 by 24 inches, is made of sheet metal, and is perforated. It is turned up at the edges to form a sort of pan about 1 inch deep, and is scored to give the impression of being 2 tiles 12 inches square. It is finished in white. This tile is installed by snapping it on "T runners" which hold it to the ceiling.

This material had always, prior to this time, been installed by our regular workmen who are carpenters. At this time we were installing exactly the same material at Oak Ridge with carpenters. In submitting our bids, and executing these contracts, we, of course, based our figures on using our own carpenters. Without going into detail, I will say that we figured labor at about 7½ cents per square foot, on a job involving about 110,000 square feet.

Actual work on the job did not start for over a year. About a month prior to the beginning of installation I was advised by the sheet-metal workers union that by a spot decision the acoustical work on the Arnold Engineering Development Center had been awarded to their union. I questioned this, and checked with the business agent of the carpenters union. Since it was members of this union who would lose work by this ruling, I felt I could certainly rely upon him. He, surprisingly enough, confirmed the information I received from the sheet metal workers. My superintendent, who also carries a carpenters card, advised me to use the sheet-metal workers. I was, therefore, forced to abandon my own employees and use sheet-metal workers to install the acoustical tile.

Now, on the face of it this would seem to be no great hardship, since the two trades receive approximately the same rate of pay. But the difficulty is this: I was not able to use my own men, who were accustomed to this type of work. Even carpenters who were un-

accustomed to this work would have been less satisfactory than my own men. Furthermore, I was forced to pay the sheet-metal workers for 10 hours for 8 hours' work to include 2 hours' travel time. Actually, most of them lived within a few miles of the job.

These men would not work under my foreman, but forced me to hire a foreman and steward from their union. Neither their foreman nor my own, whom I left on the job to act as sort of superintendent was allowed on the scaffold.

I might add right here that after about a month, while the job was going so slow and they were giving my foreman, who was acting as superintendent, such a hard time that he wanted to leave the job, and I could see they were pulling a slowdown on me, just doing as little as possible to get by without being fired, I talked to the sheet-metal workers business agent. I let him pick a superintendent for me, and I pulled my men off the job and sort of superintended the thing myself.

The result was that I was actually paying two men for simply watching what went on. Furthermore, with my carpenters, I have always been able to use an apprentice with each journeyman. There were no apprentices available among the sheet-metal workers, and I had to use journeymen entirely.

As you can readily see, the installation of acoustical ceiling is not the type of work actually done by sheet-metal workers. Their job usually deals with air-conditioning ducts, heating systems, and the like, while installing acoustical ceiling is work of a finished nature. We even wear white gloves in putting up this particular type of ceiling, but we were never able to prevail upon the sheet-metal workers to wear them. We actually incurred a substantial additional expense in having the ceiling cleaned after it was put up. All in all, the work did not measure up to that of my carpenters, and much of it had to be done over. The net result was that labor cost about 15 cents per square foot as against the 7½ cents per square foot we had estimated.

The fact that I later found out that there was in fact no spot decision, such as I was advised had been handed down, only made this loss harder to swallow. It is not really pertinent to this discussion since, had there been such a decision, I would have been bound by it.

The foregoing is just one illustration of the problems which jurisdictional disputes present in the building trades. I have been underbid on several jobs, particularly since this job, because I figured on the basis of using one trade, whereas others bid on the basis of using another. In some cases they may get away with it; in others, they will find themselves right where I was in Tullahoma.

I am not a legislator nor an attorney; and, therefore, I cannot make specific proposals for changes in the Taft-Hartley Act. I think the above illustration, however, will show you the need that exists for some sort of nationwide standard which we who have to make bids can rely upon.

The contract between the AFL and the Association of General Contractors is some help, but in the end the contractor should either be able to pick his trade freely or, if he is going to be forced to yield to these jurisdictional provisions, he should be protected from errors he might in good faith make in attempting to pick the proper trade to do his work. If we are going to continue to operate under contracts

similar to the one mentioned above, then at least we should be protected from picketing while a decision is being reached.

In my opinion the Taft-Hartley Act should be made stronger. It should be, I think, mandatory for the National Labor Relations Board to make quick decisions on jurisdictional disputes.

Chairman McCONNELL. Are there any questions?

Mr. GWINN. I would like to ask the dairyman a question. What happened to you in the consolidation?

Mr. MILLER. I was appointed vice president of the company, but I have never been to a meeting and I never have been called to a meeting. They have completely taken over, and I have no authority there whatsoever. That was agreed.

Mr. GWINN. Did they agree to hire you for a period and then you agreed not to go back into the dairy business any more, and that sort of thing?

Mr. MILLER. I had to; yes, sir.

Mr. GWINN. Did you have any evidence that the bigger company that took you over was sympathetic with or aiding or abetting the teamsters' union in putting you out of business?

Mr. MILLER. Not so much this particular company that I merged with as the other larger companies who never dreamed that there would be a merger. They thought they would get my business at a very nominal price. This was a surprise move, and I think that they were also instrumental in fomenting this trouble.

Mr. GWINN. You think that they sicked their own drivers' union on you?

Mr. MILLER. I think that.

Mr. GWINN. Is that just a feeling or have you any proof of what was done?

Mr. MILLER. I have no definite proof, but I do have inclinations that I do not think are biased that point very much to that.

Mr. GWINN. When you were forced to pay the same wages as the big company, the big competitor, that in itself put you out of business, I take it. You could not pay that scale of wage and survive as a little operator.

Mr. MILLER. Practically, yes; there was one other thing there that handicapped me a lot, and that is my men were poisoned with the idea that we were slave drivers, which, like I said in the statement, was practically something that came overnight.

Then there was the fact that we had to pay the same wages. Our per-unit cost of production was so much greater than theirs.

Mr. GWINN. But you could furnish the customer at your wage scale a cheaper product, and that enabled you to stay in business?

Mr. MILLER. No; we were under the Pennsylvania milk control board law and we had the same identical price.

Mr. GWINN. You charged the customer the same as the big company?

Mr. MILLER. That is right; our prices were uniform.

Mr. GWINN. And the stores the same?

Mr. MILLER. That is right; yes.

Mr. GWINN. You were able to give discounts, though, possibly, to induce customers to come to you and to leave the big company, were you not?

Mr. MILLER. We positively were not allowed to do that. The Pennsylvania Milk Control Commission had that fixed. We got all of our business by superior product and salesmanship.

Mr. GWINN. By a superior product?

Mr. MILLER. And salesmanship; yes.

Mr. GWINN. Well, the fact that your truckmen were willing to work for you for less than the union wage shows that in your market there were men who were willing to work for less. That enabled you to compete. You were paying a little lower wage scale than the union.

Mr. MILLER.. I was; yes.

Mr. GWINN. And your men were saved the union dues and initiation fees.

Mr. MILLER. The take-home pay was really more before this unionization took place in my plant than in theirs, but they were working longer hours and they were more willing workers. The whole thing grew out of superior salesmanship and better workmanship and better goodwill, until this poison factor was thrown in there.

Mr. GWINN. Well, now, could we draw this conclusion: that this industrywide bargaining or union-wage scale and compulsory unionism creates a monopolization which puts the little outfit out of business? Can we make that kind of observation from the testimony here? Is that your experience in the little-business field?

Mr. MILLER. That is right. It is just as I said in my statement: When we merged, the same machinery put out the double product in the same amount of hours, and the men were not being pressured to do any excessive amount of work.

Mr. GWINN. The same experience you had in the construction business. If you are under a monopolistic labor control, and there are no other men that you can turn to, you must deal with the labor agent, and then you are at his mercy and you have to do what he tells you. You have no alternative; is that right?

Mr. CURRIN. That is not right. I can refuse to deal with him and then try and use nonunionmen, and they won't let them on the job, and it will just put me out of business.

Mr. GWINN. What is that?

Mr. CURRIN. I am at their mercy either to do what they say or go out of business in that type of work.

Mr. GWINN. It is impossible for the nonunionman really to get anywhere in the building trades.

Mr. CURRIN. It is impossible for him to get into the union; almost.

Mr. GWINN. You mean they will not take in apprentices, and they will not take in anybody who applies for a union card?

Mr. CURRIN. You have to have a brother or relative or something, or know someone real well to get into the union.

Mr. GWINN. Then you do not seem to think that there is this free collective bargaining that we hear so much about and the freedom and democratic process and all of that?

Mr. CURRIN. It looks good on paper, but I have not seen much practical experience with it.

Mr. GWINN. There is just a one-way road and that is that you are subject to the mercy of the union and you cannot make a bid on a job not knowing what the union is going to do or whether it is going to drag its feet.

Mr. CURRIN. I have certain union employees who work for me all of the time. I have two men who have been there since 1931 and I know what they can do. If I can use those men I can estimate a job and be within 3 percent right on the total labor of just about any sized job. That is using my own men.

But if I am forced to use outside men, men that I have to pick up from some other building trade, men that I have to draw from a pool at the labor hall, they just do not compare with my regular employees because it is a special type of work and not many people know how to do it.

Mr. GWINN. That is all.

Mr. WIER. I only have one question and that is of Mr. Gwinn. I cannot miss this opportunity because if I heard the milk situation correctly, it looks very much to me like the great Commonwealth of Pennsylvania has joined operations in the obstruction of the free-enterprise system.

Mr. GWINN. I think that that is so. I think that all compulsion, whether State or union, or monopoly of business, is bad, don't you?

Mr. WIER. Let us try some of the States and perhaps we might find some of this compulsion coming from the States.

Mr. CURRIN. I had a case back in Georgia, about 1946. I used to pass through it going down to Fort McClellan down there. It is called the State of Dade—I think they are probably sorry they came back in. I don't know.

Mr. GWINN. I thought the gentleman from Minnesota had heard so much of this that he would be surrendering his union card now.

Mr. WIER. Mr. Gwinn, I have lived with this for 28 years and I am glad you gave me this opportunity. Out of the millions of cases in the operations of industry in this country we have less than 400 illustration such as these men here give, and I have sympathy for these men and their problems.

But what we have here is the worst illustration, perhaps because people have made it their business to bring them here. While we are talking about labor-management relations, I think that this committee, or any other committee, could find a like situation if we delved into, let us say, the military expenditures, or the billions of dollars they spend. I think we could find a lot to criticize there. That would be in the way of waste, mistakes, and so forth.

I think that that is the price we pay for democracy. We either have our choice of democracy and making the best of it, or we have our choice of dictatorship and fascism or nazism.

So these things—sure, these things are happening; they are the weakness of the human being and they are the weaknesses of judgment.

I shall never give up my union card.

Mr. GWINN. In that connection I would like to ask Mr. Kimball if you think, out of your experiences in administering the Small Business Men's Association, that these cases you have brought here are the exceptions or the fringe difficulties that we have, or is this becoming a pattern in the Nation?

Mr. KIMBALL. Our experience has been this, Mr. Gwinn: In the case of the 3 gentlemen here, we did not pick them out of some 11,000 of our members as the worst cases of this sort of thing. As a matter of fact

we wrote a general letter to our members when the committee started their hearings and we had been invited to appear here. We could have brought hundreds, 200 members with similar cases, but we were limited, of course, to the number of witnesses that we could have.

These gentlemen are not here because of their individual testimony, but we picked it out of this group: We got 2 gentlemen from the South and we had 2 gentlemen from the North, but the other gentleman could not appear here today.

It is general. The answer to the question you asked is that it is general. These experiences are all over the United States and we have records of it in our office—records of these various experiences.

Mr. GWINN. Would you gentlemen say, or would the witnesses say, that in their own communities they think that their experience is common to other small-business men's experience?

Mr. KIMBALL. Yes.

Mr. CURRIN. Yes; it definitely is, not just in building trades but any other line that you might want to pick.

Mr. WATKINS. My difficulty is not in my community; it is when I haul products from my community into the Midwest and Eastern States. The unions, because our drivers are nonunion members, refuse to let us deliver the product to the warehouses where they hold these contracts. They have no contract; they just have a closed-shop agreement there. Because our truckdrivers are nonunion members they will not let them deliver the merchandise.

It is like in New York City—this has been going on for years—when we enter the Holland Tunnel we have to allow a local AFL chauffeurs and teamsters union member get into the truck with our driver and go on to the point of delivery and unload the truck and bring it back and turn it back over to him at the Holland Tunnel.

Because we do not want to trust that tractor with a stranger, our man goes on and performs all of the work, and we just pay the union-man because it is the only way we can keep peace. Otherwise they would cut our tires; and I have had cases where they would break up the merchandise when we were trying to deliver, and all kinds of violence. So it is just a matter of peace offering we make to them.

Mr. SMITH. Will the gentleman yield?

Mr. GWINN. I yield.

Mr. SMITH. Of course, you understand why they do that is because your truckdrivers are not competent truckdrivers. They do not know how to follow the lights in New York City, so in order to get better traffic control up there they have to put these men in, and they sit there and tell the man that there is a red light ahead, and this is a green light. That is the reason they have to do that.

Mr. WATKINS. That is a good argument, but I started driving from Georgia to New York back in 1935, and I know New York City about as well as anybody up there.

Mr. SMITH. That is what the president of the union said down here the other day, they had to do that.

Mr. WATKINS. I can give an example. In Rochester, Minn., at the Rochester Dairy, which is right on the side of the highway we go through on, they will not let that driver of ours back the truck up to the dock to load. We have got to have a union man back it up.

Mr. SMITH. The gentleman from Minnesota can explain that.

Mr. WIER. I agree with what he says.

Mr. SMITH. Mr. Watkins, you know Mr. Tobin said a few years ago, not many, that it would not be very long until every truckdriver in America that drives a truck on the highway will have to belong to the teamsters' union, and I think from your experience that you would probably agree that that was a pretty correct statement.

Mr. WATKINS. That is the way it is going. I would not mind it if my men wanted to join, but they make them join just to get to unload, for the privilege of working there.

Mr. SMITH. That is all.

Mr. GWINN. Are you going to hold out and fight them?

Mr. WATKINS. I am all right down in Georgia; it is just when I get up here north of the Mason-Dixon line.

Mr. GWINN. That is all.

Chairman McCONNELL. Are there any questions?

Mr. WIER. I want to follow that through, that last comment he made.

He has been struck up in New York a number of times about the men being union. When you pay this fee that you say that you pay at the tunnel, what do you get? Do you get a receipt or a membership? Don't you pay for a membership in a union?

Mr. WATKINS. No, sir; we just get a receipt for a day's work.

Mr. WIER. Someplace along the line your men must have joined the union, and if they joined a union that entitles them from then on, as long as they keep their dues paid, to admittance any place in the United States. They should never have trouble after that.

Mr. LANDRUM. Will the gentleman yield?

Mr. WIER. Yes.

Mr. LANDRUM. That is not the question we are talking about. Whether he joins or does not join, he is being forced to do something. That is the point this gentleman is complaining of. And what I think we should be interested in.

Mr. WIER. The question that Congressman Smith raised with this gentleman is that they are being forced to join the union. Now, if they have ever joined a union any place, Rochester, Minn., or San Francisco or New York City, they are unionmen and will not be stopped.

Mr. WATKINS. No, sir; that is not the case. If he is a member of the Rochester 874, when he gets to New York he cannot unload. That card is no good in New York City.

Mr. WIER. I hesitate to accept that, because here in the city of Washington today you will find truckdrivers from my State who are carrying Minneapolis, Rochester, Duluth cards, and they are not bothered. A truckdriver's card is good any place in this United States.

Mr. WATKINS. That is not the practice that I find.

Mr. CURRIN. That is not the practice in the building trades, either.

Mr. GWINN. You have been away from it for some time, Mr. Wier.

Mr. WIER. Never mind that. I am willing to make a little wager that the card of Atlanta, Ga.—you have a lot of truckdrivers in Atlanta and you have got a union—those truckdrivers in Atlanta can take a vanload of furniture, household goods, or garden products or anything else to any part of this country and that card that they carry clears them.

Mr. WATKINS. One thing is our men are nonunion, and they have never had an election, and there has never been any attempt at unionizing them that I know of. All they want to do is to be able to go in and perform the work they left home to do, but they are prevented from doing it.

As to your question about the Atlanta local, you can name the form of proof you want, but don't pick your town. I will give you all the towns; just don't pick your dates because we had so much trouble with this thing in New York City that the FBI agreed to ride our trucks for a month. During that 30 days the FBI rode our trucks we did not have any trouble at all. The next day, the very next day—I do not know how this information got out—but the very next day after the FBI quit riding our trucks—and they were in truckdrivers' uniform—then we started having trouble again.

And what I was getting at, in order to get you the proof that you want, the union would have to not know what day I was going to have what driver in what town, because they have the biggest grapevine you ever saw. I would have to go in there without them having any knowledge of what day I was going to be in what town to prove the point. We could take an Atlanta, Ga., card or take this 874 card at Rochester, Minn., and prove to you that that was no good right here in Pittsburgh or New York or Washington, D. C.—or we do not have that difficulty against the boycott that is in Washington.

Mr. WIER. When we speak entirely about the union card, the Atlanta, Ga., union truckdrivers will have no difficulty in Minneapolis, St. Paul, Rochester, Duluth, or any place where we have teamsters locals.

Mr. WATKINS. No, sir; that is not the case. They won't honor the Atlanta, Ga., card.

Mr. WIER. Please do not tell me that because I know better.

Mr. SMITH. Mr. Wier?

Mr. WIER. Yes.

Mr. SMITH. There is a committee report from this committee made 3 years ago to the effect that we made an investigation of the Washington Street Market and we found that an out-of-town unionman could not drive his truck, and he could not unload his truck. He had to get a dockman to unload his truck. If he did not belong to Pappas' union up there he could not unload or could not drive. That is in a committee report.

Mr. WATKINS. Mr. Smith is correct.

Mr. WIER. The teamsters have got their headquarters in Washington now, and I would like to make a wager with you. I would like to get some of that Kansas money. I would wager that a truckdriver from the city of Kansas City could drive a truckload of wheat from Kansas into the New York loop and unload it.

Mr. SMITH. I am not talking about wheat; I am talking about perishable commodities.

Mr. WIER. All right, perishable anything. A truckdriver from Kansas City or Topeka can operate his truck in the city of New York if he has got a paid-up union card.

Mr. SMITH. He couldn't a few years ago. I do not know what he could do today.

Mr. WIER. I am willing to wager on that.

Mr. SMITH. Wagering is unlawful.

Mr. WAINWRIGHT. Wagering is as unlawful as featherbedding.

Chairman McCONNELL. Are there any other questions? Mr. Landrum.

Mr. LANDRUM. Yes, sir. In connection with Mr. Watkins' statements and his prepared text here, I believe in this discussion we may be overlooking something of paramount interest.

You state that these drivers are not, as a matter of fact, wage earners, but they are small-business men themselves.

Mr. WATKINS. That is correct.

Mr. LANDRUM. They own that truck.

Mr. WATKINS. That is right.

Mr. LANDRUM. And as a small-business man, as an investor, purchasers of equipment to carry on that business, they are required to submit to union membership in order to be able to unload their own vehicles?

Mr. WATKINS. That is correct.

Mr. WIER. That I agree to. I agree that that is the law of the union, because we had exactly the same case here from Chicago the other day.

Mr. LANDRUM. You say that is the law of the union, do you not?

Mr. WIER. That is right.

Mr. LANDRUM. Not the law of the land.

Mr. GWINN. Oh, yes; the law of the land. You misunderstood. The law of the union is the law of the land.

Mr. LANDRUM. I thank the gentleman from New York.

Chairman McCONNELL. Are there any other questions?

Mr. FRELINGHUYSEN. Mr. Chairman, I was just wondering if Mr. Kimball or one of the witnesses would like to comment on the proposal that perhaps those employing a small number of people should be exempted altogether from the Taft-Hartley Act, also the building trades.

Mr. KIMBALL. I can only speak for our association and their attitude on the various provisions of the Taft-Hartley law. That subject was not acted upon in our convention, so if I would make any statement it would be my own personal opinion.

Mr. FRELINGHUYSEN. Would you care to comment as an individual?

Mr. KIMBALL. I would rather not.

Mr. FRELINGHUYSEN. How about Mr. Currin?

Mr. CURRIN. I would be glad to.

I noticed in the papers an article in the Chattanooga Times the other day about this same hearing in the Senate. It said that they just about had reached their decision up there. And I think his name is Senator Alexander Smith—

Mr. FRELINGHUYSEN. From the State of New Jersey, my State.

Mr. CURRIN. The Yankee from New Jersey said they were going to go ahead and put the law on through in some form but were not going to let the Taft-Hartley Act apply to the buildings trades.

Well, that is a law that we need, I feel, worse than anywhere else. It should be stronger than it is now.

Mr. FRELINGHUYSEN. Your feeling is that you cannot do without it, and you would like more protection than it now affords you is that right?

Mr. CURRIN. If they just carry out the provisions in the act, and just add one thing in regard to jurisdictional disputes: It should

be made mandatory for the Board to settle these decisions. Now they say they can settle it, but they never settle anything until you have a strike.

Mr. FREYLINGHUYSEN. In fairness to Senator Smith, I think it is a proposal which he has made which will be considered along with others.

Mr. CURRIN. The reporter might have gotten it wrong. I am not sure; it might have been written up wrong.

Mr. FREYLINGHUYSEN. Thank you. That is all Mr. Chairman.

Chairman McCONNELL. Are there any other questions? If not, Mr. Kimball and the other gentlemen, I certainly want to thank you for appearing here and for giving us the benefit of your personal experiences. As you know, this is a tough and a big question. We are talking about freedom, and of course freedom would suggest that the Federal Government would be taken out of the field, and when we ask about taking the Government out of the field the very advocates of freedoms say that the Federal Government should stay there with the law. So it becomes, as you can realize, a quite confusing matter. But we certainly appreciate your being here today.

Mr. KIMBALL. Thank you for the opportunity, sir.

Chairman McCONNELL. We are going to go through and finish this morning. I have asked Mr. Richards to go on as soon as the gentlemen finish.

The next witness will be Mr. A. P. Richards, vice president and treasurer of the Ohio Can & Crown Co., of Massillon, Ohio.

Mr. Richards, I want to say to you that I appreciate your willingness to appear here on very short notice, and not only to appear here as of this afternoon but also to be willing to move it up to this morning. We have had a great mass of correspondence, and I believe our correspondence would run into some thousands of letters, and apparently there was a misunderstanding in connection with your appearance here. The Chief Clerk called it to my attention and we immediately contacted Congressman Bow and told him to get hold of you. We are sorry for any inconvenience that it might have caused you, and also we wish to express to you our appreciation for your willingness to appear on short notice.

We are nearing the end, and we had no other opportunity to put you on except now. Tomorrow is the last day of the hearings.

STATEMENT OF A. P. RICHARDS, VICE PRESIDENT AND TREASURER, OHIO CAN & CROWN CO., MASSILLON, OHIO

Mr. RICHARDS. Thank you very much. I am not very much inconvenienced myself. The only thing I have to apologize for is that I did not have an opportunity to prepare testimony for your committee itself. I did appear on April 7 before the Senate committee, and, of course, I had prepared testimony for that. I do not know that I could improve on it too much, so if it is all right with the committee I will simply use that as my testimony here.

Gentlemen, I have read and studied a great deal of the testimony that has been presented to you, as well as to the Senate committee, by both industry and union leaders. It is evident that industry has its own peculiar problems which they seek to correct by amendments of

the Taft-Hartley law. I would like to submit that there are as many different company problems as there are companies, and to pass legislation that would correct individual industry problems would leave our labor relations in a more chaotic condition than they are today.

On the other hand, the union leaders come before you preaching Americanism, and in the same breath violently protesting against being governed by the same laws that govern the American citizens. They believe in injunctions for corporations but not for themselves. New corporations are merely groups of individual stockholders who have joined together to form associations for a corporation for a profit. Unions are groups of other American citizens who have joined together for economic betterment. And I can see no difference in the American principle as applied between one group and another.

They believe that companies should be liable for contract violations but not themselves. They believe that companies should be prohibited from making political contributions but not themselves. They believe that companies should have their right of free speech curbed but not themselves. They should be free to go and spread any sort of propaganda and stories regardless of how true they are. In fact, they believe in Americanism just so long as it is convenient for them to believe in Americanism, but, in short, they demand special privilege, and that is not democracy.

In my testimony I am going to comment on certain features of the present law which I believe to be contrary to our American way of life and our concept of individual liberty. I feel quite certain that I shall not present any proposal which you have not heard before, but I have spent my time and my money to come down here because I believe, in all sincerity, that the greatest danger to our democratic form of government is not from any force outside of our country but from those who seek special privilege in the name of democracy.

I am vice president and treasurer of the Ohio Can & Crown Co., and owner of one-half of the common stock of that company. We employ about 350 to 400 people, and we have a CIO steel workers' union in our plant.

In appearing here I do not represent any association, and my testimony will project my own thinking and experience and that of our company. I do not come here asking any special consideration to be given to industry, whether large or small. Altogether too often we hear that this proposal or that proposal is friendly or unfriendly to labor or industry. I am of the firm opinion that no legislation should be taken under such a concept or even under the belief that it is fair to both labor and industry. Such an approach is responsible for the unsatisfactory and chaotic situation existing between organized labor and industry today.

I submit that principles are incapable of being compromised and that any legislation should be measured against one and only one yardstick, and that yardstick to be—"Does it fit the principles as laid down in our Constitution and Bill of Rights?" If it does meet such a test, then it is in the public interest and for the benefit of all people in the United States with special privileges for none.

One after another the leaders of our powerful labor unions come before you and unblushingly make demands and proposals in the name of labor. More often than not, their proposals are against the interest

of the working people and seek merely to increase the dictatorial power wielded by these union leaders.

In the name of labor, they propose to remove the ban on compulsory union membership. Do you suppose there is a worker in the United States who would not like to reserve unto himself the right of decision on that matter?

They propose the repeal of provisions in the present law governing decertification. Do you suppose that any worker would want to give up his right to resign from a union if he so desired?

They propose that unions be permitted to make political expenditures. Do you suppose there is a worker in the United States who would not like to reserve to himself the right to decide which political party he will support with his money?

No, the wishes of these union leaders are not in the interest of labor, but only in the interest of their insatiable desire for more and more power.

Now I want to comment upon industrywide bargaining.

Industrywide bargaining and labor monopolies are one and the same thing in their end result. We learned years ago the evils that were brought about by industrial monopolies, and appropriate corrective legislation was passed in the public interest.

Surely no one will argue that it is against public interest to have the Nation's supply of coal, or steel, or transportation, or implements of defense, shut off by a monopoly of capital or industry, and in the same breath argue that when such economic necessities are shut off by a monopoly of workers that the public interest is not endangered.

It is not my intention to take up your time repeating historic facts, or expounding theories, but to point out to you the effects of monopolistic or industrywide bargaining upon our own small company.

Our basic business is the can business. In the can industry upward of 75 percent of all cans are manufactured by two large corporations, and the remainder by some 50 or 60 smaller companies of varying size. We are one of the smallest. The larger can companies with unlimited financial resources are in a position to and do to a certain extent offset increased labor cost by installation of labor-saving equipment. For instance, there is available, to those with the money to buy it, equipment which will save one-half the labor of printing the labels on cans. There is equipment available to cut the labor of stamping tops and bottoms of cans by more than one-half, and many other labor-saving devices available to those in our industry where money is no problem. But those of us who do not have access to unlimited capital must live with a labor disadvantage when compared to the large corporations.

Now, it is very apparent that if through industrywide bargaining we are required to pay the industry rate, that it is only a matter of time until we must close our plant. But you say, aren't the workers in your plant entitled to make as much money as the workers in the plants of the big corporations? That seems like a reasonable question. But the real question is would our workers be better off at what we can afford to pay them or being without a job? There is no doubt about how our employees would answer that question.

We do not hear too much complaint from the large corporation about industrywide bargaining. I think that the reason is obvious, as it is evidently very much to their advantage to know that all companies in the industry must pay the same labor rates, giving to the

large companies whatever advantage they can have and do obtain through more modern and labor-saving equipment.

There can be no question that industrywide bargaining, if allowed to continue, will eventually mean the end of all small and even medium-sized companies who do not have the unlimited capital resources possessed by dominant industry corporations.

That there will be difficulties in drafting such a law is evident. Just as there were difficulties in drafting the Sherman antitrust law some 60 years ago. This Sherman law has been improved from time to time, and no one will say that as of today it is perfect. Nevertheless it has done great good and the necessity of such a law no one will dispute. I have no doubt also that great confusion will follow the abolition of industrywide bargaining, but I do not know of anyone who ever went through a gallstone operation that didn't feel worse the first few days after the operation than they did before the operation. The question seems to me to be: Shall we go on knowing that we have this ultimately fatal disease, or shall we undertake the operation to cure it?

Free speech: I am sure you gentlemen have heard many eloquent orations on the inalienable right of free speech as conceived by the Constitution and guaranteed by the Bill of Rights, and I am equally sure that I cannot improve on what has been said and written on this subject, but I do want to point out how limitations which have been placed upon free speech of employers can and has worked against the real workers in our own company.

Early this year a group of our employees petitioned the National Labor Relations Board seeking to decertify the CIO Steelworkers Union as their bargaining agent. While the company had nothing to do with initiating this election, we were, of course, an interested party and would have liked to have told our employees exactly what our position was. Briefly, it was this.

It is becoming increasingly evident that our company must either rid itself of the International Steelworkers Union or make plans to go out of business. The ever-increasing demands upon our small company by this powerful international union makes that decision very clear. We could not explain this to our employees because no matter how true it was it would have been adjudged a threat and as such an unfair labor practice.

We could not tell our employees that my associate and I have a solemn agreement never to sign a contract carrying any form of compulsory unionism except as a last resort and then only for the purpose of orderly liquidation of our company. That would have been adjudged a threat and as such an unfair labor practice.

We could not tell our employees that we had a well-considered profit-sharing plan patterned after plans which have been in successful operation in other companies for years. It would have been a very simple matter to prove to our employees that the plan we had in mind would have gained them immeasurably more than they could ever hope to gain through the efforts of this international union. We could not tell them of this because that would have been a promise and as such an unfair labor practice.

Now is it possible that this restriction upon free speech would or could have worked to the benefits of our real workers?

In one instance they were threatened with the loss of their employment, and in the other they stood to make great gains, but, in-

stead of knowing these facts, they were required to go into the polling booths ignorant of the plans of their employer.

There could be only one reason why the union leaders want this curb on free speech by an employer and that is, above anything else in the world, they fear the truth.

If this curb on free speech of an employer is not for the benefit of the real workers, then who does benefit and who is it supposed to protect?

I notice in the January 30 issue of U. S. News & World Report that the CIO Steelworkers Union had a net worth of \$10,394,000 and that their income for the last 6 months of 1952 amounted to \$12,774,901. Mr. Walter Reuther is reported to have made a statement the other day estimating that by 1960 his UAW union would have \$1 billion in their welfare fund.

Now, the Ohio Can & Crown Co., after 18 years of hard and diligent operation, has been able to attain a net worth of \$509,267, of which \$355,337.50 is accumulated earned surplus, and we have never paid a cent in common-stock dividends. That leads me to wonder who should be protected from whom?

Let me say again that I do not come here asking for Government protection against any union. All I ask is for a restatement of the individual rights of American citizens and that the Government does not take away from me and my company the one weapon we have with which to combat this enemy of all free enterprise, the international and monopolistic labor union. That weapon is our inalienable right of free speech.

Last offer vote: Under this doctrine the employees of a company cannot be called out on strike by the union officials until they have had an opportunity of hearing and considering their employer's last offer, and then voting by secret and supervised ballot in a supervised election, on whether or not they desire to accept that offer.

Let me give you an illustration of how such a requirement would have worked in our own company.

When negotiations opened for a new contract to replace the one which expired January 1, 1953, of this year, the CIO Steelworkers International, to use their own words—"threw the book at us" including steel wages, fringe benefits, and a full union shop.

Now, we did not have too much trouble arriving at an agreement on the economic issues involved. However, we could not come to an agreement on two main issues. One, giving the union a hand in our incentive system, the functions of which we had always reserved to ourselves, and, two, the union shop.

On December 30 we made our last offer to the union in which we agreed to give the union a voice in our incentive program, but again refused any form of a union shop.

At the union's meeting on December 31 the membership voted on our proposal and accepted it unanimously. It so happened that the district agent for the Steelworkers CIO union was not present at this meeting which was handled by one of his assistants, and when he heard that the local members had voted to accept this contract without any form of union-shop provision he promptly invalidated that vote on the technical grounds that the recording secretary had not been present and no formal nomination and election of a temporary

secretary had been voted upon. He then called another meeting of the membership 10 days or so later at which he had a number of rabble-rousing speakers and asked for a vote of confidence, which he got from the membership. Then they came back demanding some form of a union shop.

The principles of the owners of our company against any form of compulsory unionism is well known. The union officials were also well aware of the fact that the majority of our employees would not follow them in a strike call on that issue. They, therefore, agreed to a face-saving clause which has in it, no element of compulsion. You can be sure they will be back next year for a more potent clause.

The point I want to make here, however, is that our employees, the real workers in our plant, voted unanimously to accept our offer, and had we been less courageous or had we been less sincere in support of our principles we would have had to sign a union-shop clause or cease business, which is not at all what our employees wanted.

If it is the intent or purpose of this committee or this present administration to pass a labor law for the benefit of the workers rather than legislate special privileges for the union leaders I can think of no better point on which to demonstrate that principle than to give the workers themselves this opportunity of self-determination where they are so vitally and individually interested.

But you say they had this opportunity at the union meeting. Only the most credulous person who has never attended or heard what goes on in a union meeting, where they vote as they are told or run the risk of dire consequences, could hold such a belief. There is about as much democracy in an international union meeting as there is in Soviet Russia, in my opinion.

Strikes to force employers to commit an illegal act: You gentlemen will recall that prior to the steel strike of 1952 labor leaders boasted "We do not intend to bend the wage formula, we do not intend to pierce that formula, we intend to bust it wide open."

They then proceeded to demand wages above those permitted by the Wage Stabilization Board and a subservient administration altered that formula to meet those demands.

You will remember also that John L. Lewis defied our Government and called a strike which never materialized simply because the Government again revised the wage formula to satisfy Mr. Lewis.

In both cases the strikes were called, or threatened to be called, to force an employer to pay wages which were illegal, and I say that no man or group of men should have the power to threaten our country with economic disaster in such circumstances.

Compulsory union membership: I say to you with all sincerity and truth that I do not know a single man or woman, except union leaders, who is not against compulsory union membership in any form. I am not going to dwell here on the rights and dignities of the individual. You know as much as I know about that, and there are people more capable of presenting that than I am. I would, however, like to refer to the most commonly used argument in favor of compulsory membership, that being the so-called free riders, those people who are supposed to benefit by the union activities yet do not belong or contribute to the union treasury.

Carried one step further such argument could lead to a totalitarian government as well as a totalitarian union. For instance, it is a fact

that the majority of the voters of the United States elected our present Republican administration. This administration has promised to make every effort to reduce taxes, and I believe they will succeed. Now, if we do have a tax reduction it will benefit every worker living in the United States. Therefore, on the free-rider premise, should everyone be required to join and financially support the Republican Party?

We throw up our hands in horror at such a suggestion, yet is that not just what the unions are arguing on this free-rider doctrine?

You laugh. Sure, I laugh too, it is silly, isn't it?

The late Philip Murray, testifying before the Senate subcommittee investigating left-wing unions in 1952, made this statement:

The right of American workers to choose their own collective-bargaining representative is as fundamental to our democratic way of life as the right to speak, to worship, and to assemble freely.

Now, surely, Mr. Murray would not have made such a statement and at the same time deny this same freedom of individual action to a worker who desired to join no union?

I have before me a front-page item appearing in the November 15, 1952, issue of the Chicago Daily News stating that 426 employees of the New York Central Railroad system had been fired by the railroad because they refused to join a union. Another 130 of their employees had quit for the same reason.

Unquestionably there are many thousands, if indeed not millions, of workers in this country who belong to the union unwillingly, but either do not have the courage to face the hardships which would be caused through the loss of their jobs or because they deem their family obligations more important than their principles.

I submit that human rights and freedom are not a question of degree, and that it is just as wrong to deny those rights to one individual as it would be to deny that freedom to every citizen of our country.

President Eisenhower in his inaugural address was loudly applauded for notifying Russia that our country "will not trade honor for security." The owners of our company believe in such a principle and are just as firmly committed to the principle of individual and human rights as guaranteed by our form of Government, and we hereby pledge that we will never "trade principles for profit."

If the Senate and House of Representatives approach this problem from the standpoint of being fair to both labor and industry and undertake to lay down regulations designed to accomplish that end you will fail. If you approach it from the so-called democratic angle of trying to satisfy the majority, or on the basis of political repercussions, I would like to point out that there are many more stockholders in the United States than there are workers. But here again you will fail. However, if you approach it from the standpoint of individual human rights and use the general welfare of our country as your only yardstick you will succeed in writing a law that will work.

Certainly, no one of you is naive enough to believe you can appease the labor leaders. Appeasement has never worked against dictators, and has been very aptly defined as "surrender on the installment plan."

In closing, I would like to again refer to our company and to state with all sincerity that only a change in our national administration

gave us the courage and hope to continue beyond this date. Had we been faced with the prospect of another 4 years of Fair Deal subservience to labor leaders we would now be in the process of liquidation.

That ends my prepared testimony, Mr. Chairman.

Chairman McCONNELL. Are there any questions, gentlemen?

Mr. Gwinn.

Mr. GWINN. Mr. Richards, don't you know that that last statement you have just given us is an unfair-labor practice?

Mr. RICHARDS. Yes, sir; I am well aware of that.

Mr. GWINN. You make me feel rather sad. You are an old-fashioned American. You think that the Constitution is still in effect.

Mr. RICHARDS. Yes, sir; badly beaten but still alive.

Mr. GWINN. I just have this to say, that I wish you would go back home and work through committees as faithfully as you worked at this, and see if you cannot join the people in reestablishing the Constitution so that the Congressmen will have some defense when they come up here. As it is now, you have not given us any Constitution to work on. We think it exists, but it does not.

Mr. RICHARDS. Congressman Gwinn, I feel kind of silly being down here, to tell you the truth. It is a rather hopeless situation. The odds are so very much against you, and it is a question in my mind what can one individual do in a situation of this kind?

However, I feel that the very fact that people are reluctant to get into those things and they are passive about it is responsible for the situation we are in. And, as I have said to some of my friends when they say "Oh, that is silly, you are just wasting your time and your money" I say, "Well, I often recall having heard people who have had a death in their family say 'Well, we did everything we could to save him. There is nothing else we could do.'"

I said, "If I am to lose my liberty, my freedom, and my American way of life I am going to have left with me the satisfaction of knowing that I did everything I personally could do to save it." And that, gentlemen; is why I am here today.

I think that there is a mistaken concept on the part of a great many politicians that they have to have the so-called labor vote.

Well, they get labor and labor leaders mixed up.

It has been demonstrated so many times that the labor leaders do not control the workingman's vote in this country. To me, the biggest compliment and the biggest appeal you gentlemen could make to the real workers' vote is to do something for the workers and not for the labor leaders, whose interests lie in diametrically opposed directions.

Mr. GWINN. That is all.

Chairman McCONNELL. Mr. Lucas?

Mr. LUCAS. Mr. Richards, was your company struck during the steel strike last year?

Mr. RICHARDS. No. We are not in the steel business. We were down part of the time on account of it. We are not in the steel business. We fabricate cans, we fabricate steel.

Mr. LUCAS. Then your employees were not required to insist upon the contract which was offered to the steel companies?

Mr. RICHARDS. Well, they demanded the same contract from us but we did not sign the same contract. Their original demand, when they came in for a new contract, was the steel formula, everything that the

steel companies had. We were submitted a steel contract. It did not turn out to be that, but that is what we were submitted.

Mr. LUCAS. That is all, Mr. Chairman.

Chairman McCONNELL. Mr. Smith?

Mr. SMITH. I have no questions.

Chairman McCONNELL. Mr. Elliott.

Mr. ELLIOTT. Mr. Chairman, at the risk of being misunderstood—and I do not want to be misunderstood—

Mr. RICHARDS. That is all right, sir.

Mr. ELLIOTT. I want to make this statement. When I think of all the 150 or so witnesses that have been before us, you have presented, certainly, the gloomiest outlook on American life that I have heard. I do not believe it is quite that bad. I think it is a rather serious indictment of our system that a man could, as you indicate here, start with practically nothing 18 years ago and build up a business worth a half million dollars and yet say that if 1 of the 2 great political parties of our Nation had happened to have won in the last election, and presumably if that same party happened to win 4 years from now or 8 years from now, that you would be faced, because of your lack of faith in America, with closing your business.

I just wonder if you meant to leave that sort of an impression on the committee here, Mr. Richards?

Mr. RICHARDS. Mr. Elliott, I am sorry, I did not, in just that way. But I would like to point out to you that successful businessmen and successful businesses are usually ones who have some measure of foresight. And right along with that thought I would like to point out that a little cancer is not fatal, but if allowed to spread it eventually is fatal. That is what I see in this picture. I see a trend toward totalitarianism and law by labor-leader dictation, and it is gaining momentum with every year and with every month. The money is accumulating. They are being permitted to compel more members and more members. And I see a growing cancerous situation there which will make it impossible for us to operate.

We never had a union until about 4 years ago, and we had a very mild contract. We maintained most of our management prerogatives. We paid, of course, area rates. If we did not we could not hire good people. On top of that we have a bonus system.

All right, it has only been this year they have demanded a voice in that bonus system.

I want to give an illustration. The steel companies have an incentive system. The unions are involved in that. They settled the steel strike last fall. And from December until this very day it is still going on in the Irving Works of the United States Steel Corp.; there has been a slowdown in their tempering mills, where they have cut the capacity 50 percent because the union is not satisfied with the incentive setup. That is over and above wage rates. It is a creeping paralysis. They come in each year for a little more, and eventually they will kill you.

I have worked to accumulate what I have been able to accumulate, and I do not propose to sit there and see that go down the drain. And unless there is a trend in the other direction away from this socialism and this dictation by labor leaders, then I am going to be smart enough to get out while the getting out is good.

Mr. WAINWRIGHT. Would the gentleman yield?

Mr. ELLIOTT. Yes.

Mr. WAINWRIGHT. I think you would be happy to know that there are many gentlemen on the Democratic side of the House who are staunch defenders of the Constitution.

Mr. RICHARDS. I know that.

Mr. WAINWRIGHT. And the way of life that you believe in. And many of those fine gentlemen are members of this committee.

I would also say, Mr. Elliott, that Mr. Richards criticized, not as I understood it, the Democratic Party but he used the words "Fair Deal" program.

Mr. RICHARDS. May I say to you, sir, that I myself am a Democrat. I was born and raised in Arkansas. I knew J. Fulbright when he was that high. I worked for his dad, and I never could be anything but a Democrat. But I am a Jeffersonian Democrat, and I admire Harry Byrd, and that is the kind of Democrat I am. And I hope the kind of Democrat you are.

All right, we are Harry Byrd Republicans.

Chairman McCONNELL. The Democrats are on that side.

Mr. RICHARDS. You all look alike to me.

Mr. ELLIOTT. No further questions.

Chairman McCONNELL. Mr. Wainwright?

Mr. WAINWRIGHT. I have no questions. I have already expounded my philosophy.

Chairman McCONNELL. Mr. Bosch?

Mr. BOSCH. I do not think I have any questions.

Chairman McCONNELL. Mr. Metcalf?

Mr. METCALF. I have no questions. I was only going to comment that never again can you truthfully testify that you know of no man who believes in the closed shop. I am not a member of a union or have I ever been a member. I am a lawyer. But I believe in the closed shop, and have come to believe in it since these hearings have started.

Mr. RICHARDS. Then I know one. I will revise that.

Mr. METCALF. Secondly, I want to state that you stated in your testimony:

It is apparent that if through industrywide bargaining we are required to pay the industry rate, that it is only a matter of time until we close our plant.

Mr. RICHARDS. That is right.

Mr. METCALF. It seems to me that instead of the foresight that you have suggested, your profits have come from the exploitation of labor, the payment of less than the standard rate, and that if the difference between paying the standard rate, the going rate, and the rate that you pay necessitates a closing of your plant, you are existing on exploitation of other individuals.

Mr. RICHARDS. You make that observation without any—

Mr. METCALF. I am making it on the basis of the statement you presented.

Mr. RICHARDS. That is an assumption and not based on any fact at all.

Mr. METCALF. I know nothing about your business except what you told us.

Mr. RICHARDS. We pay the area rates. Naturally we could not hire people if we did not pay the standard rate in our area. But because

the American Can Co. or the Continental Can Co.—and they are fine corporations. I have no complaint against those companies, I have no complaint against the large companies, and I think they are quite necessary to our economy—but because they pay a rate at New York City or in Chicago where living conditions are different is no reason why we should have to pay it in Massillon, Ohio. We pay the industry rate there, and your assumption is 100 percent wrong. We are above our area rates. Our company pays above our area rates. We get our business on quality and service and within our own community.

Mr. METCALF. I am certainly glad I brought out that you are not existing on exploitation.

Mr. RICHARDS. You do not exploit people any more. Jobs are plentiful. You do not exploit people. You should know that, that you do not do that.

Mr. WAINWRIGHT. Would the gentleman yield?

Mr. METCALF. Yes, I would be glad to.

Mr. WAINWRIGHT. You, as I have, undoubtedly have heard a great deal of testimony before the committee in the past 3 months to the effect that many good sincere Americans, who believe in the freedom to work without having to join an association—and I am now talking about the representatives of management—in many instances pay higher than the going rate. And in every instances that I have heard here they pay the going rate.

Mr. METCALF. I was merely making the observation to Mr. Richards on the basis of the statement that he made that if he had to pay the industry rate he would have to close his business. That was the only assumption that I was going on. I will agree that there are many firms that both you and I know of that have profit-sharing plans, that are nonunion, that have better employee-employer relations than any union relations that I know of. I was merely taking Mr. Richards' own testimony and reading back to him the statement that he has properly explained.

Mr. WAINWRIGHT. Thank you.

Mr. ELLIOTT. The only thing I would like to say is that I would like our friend, Mr. Richards, who has demonstrated through his testimony and his demeanor here a great ability, to turn some of that ability to helping us solve these problems between management and labor, which I do not think you can do, Mr. Richards, by a condemnatory approach. I do not believe the situation is as bad as you say it is. That is what I am trying to say.

Mr. RICHARDS. That is the main trouble, you do not believe it.

I would like to make one suggestion to you that might change your thinking a little bit. We are victims of propaganda in this thing. We refer to labor and management. Now, let us analyze that just a little bit.

What is management? Management is the representation, they are the leaders of stockholders who have formed together to form a corporation. There are some, I believe, 70 or 80 million stockholders in the United States, and management is the leader of those stockholders. They are under the direction of them.

Now, we have labor, the working people in this country, and labor leaders are the directors of those.

So, to say labor and management, you refer to a group of 15 or 16 million as against the management. Take them in their true perspec-

tive, stockholders and labor, labor leaders and management. And when you do that you will come out with a better concept of what you are trying to do. But forget all about it, and legislate according to the Constitution and our American way with special privileges for none and with the general welfare as your only yardstick, and you will not have any trouble.

But to try to correct by specific legislation every inequality and every problem that industry has, you will get nowhere in this legislation.

Chairman McCONNELL. Mr. Rhodes?

Mr. RHODES. Mr. Richards, your annual sales are somewhere between \$3 and \$4 million?

Mr. RICHARDS. That is right.

Mr. RHODES. Would you say that \$2 million would be a fair average for your 18 years of experience?

Mr. RICHARDS. No; that would be just a little bit high.

Mr. RHODES. But not too far off?

Mr. RICHARDS. We built a new plant about 5 years ago and doubled our business at that time. Probably it would not be too far off, 2 million would not be too far off.

Mr. RHODES. Your net worth is some \$509,000?

Mr. RICHARDS. That is right.

Mr. RHODES. Which means that you have, on the average, added to your net worth at the rate of about \$20,000 a year?

Mr. RICHARDS. That is right, sir.

Mr. RHODES. And if your sales were \$2 million that would represent 1 percent of all your sales added on to the net worth?

Mr. RICHARDS. That is correct.

Mr. RHODES. Which would not indicate to me that you have been exploiting anybody very much.

Mr. RICHARDS. We have never paid a dividend. We did \$31½ million last year and ended up with \$68,000 profit after taxes.

Mr. RHODES. That is all.

Chairman McCONNELL. Mr. Richards, I have one, I guess you would call it major, question. I have listened to you talk and I think I understand your philosophy and beliefs. Would you be in favor of removing the Federal Government from labor-management relations and leave it to labor and management and the States to handle?

Mr. RICHARDS. Yes, I would; leave it to the States. I believe that it would be solved in that manner.

Chairman McCONNELL. It would be agreeable, then, to repeal the Taft-Hartley law and the Wagner Act and so on?

Mr. RICHARDS. Entirely; yes, sir.

Chairman McCONNELL. And various other labor laws with which the Federal Government is actively concerned?

Mr. RICHARDS. I believe that would be the ideal situation. I do not think it is going to happen, but I would like to see it.

Chairman McCONNELL. I would say this to you; you are consistent. Are there any other questions?

If not, this will conclude our testimony and the hearings for today, and I want to express the appreciation of the committee and my own personal appreciation for your being here.

Mr. RICHARDS. Thank you for your patience in listening to me.

Chairman McCONNELL. The clerk of the committee has certain statements and letters to be submitted for the record.

Mr. GRAHAM. I should like to insert at this point the statement of Mr. Joseph C. Wells, an attorney for the United Aircraft Corp., of East Hartford, Conn.

Chairman McCONNELL. Without objection, it will be received into the record.

(The statement referred to follows:)

STATEMENT OF JOSEPH C. WELLS, ATTORNEY, EAST HARTFORD, CONN.

My name is Joseph C. Wells. I am, at present, employed as an attorney by United Aircraft Corp., of East Hartford, Conn., to counsel the corporation primarily in the field of labor relations. I do not, however, appear here today as the representative of that corporation. The privilege of being here is one which has been accorded me so that I may express my personal views with respect to the administration of the Taft-Hartley Act by the National Labor Relations Board.

My observations are derived from varied experience as an attorney in the field of labor relations. I joined the staff of the National Labor Relations Board in June of 1944 as an attorney in the Review Section and resigned in June of 1950 when I was Associate General Counsel in charge of the Policy and Appeals Division of the General Counsel's Office. In the interim of those dates, I served also as legal assistant to former Board members Gerard D. Reilly and James J. Reynolds, Jr., and as a trial examiner for the Board. My employment with the Board covered the last 3 years of the Wagner Act and the first 3 years of the Taft-Hartley Act. Since then I have engaged in the practice of law as an associate of the Washington law firm of Hanson, Lovett & Dale and joined the staff of the corporation counsel of United Aircraft Corp. in February of 1952. As a labor attorney, I have represented employers, including daily newspapers, radio and television stations, manufacturers, retail merchants, building constructors, and transportation lines. All but a small part of this practice has directly involved the Taft-Hartley Act and its administration by the Board.

I believe that it is the duty of our administrative agencies, such as the Board, to construe and apply the laws entrusted to them as nearly in accord with the intent of Congress as is possible. Congress is the legislative voice of the people; the administrative agencies are but its echo. If we are to continue a Government of limited powers, the administrative agencies must in their every policy and decision faithfully reflect the will of Congress. Otherwise, the whim of the bureaucrat will be substituted for the judgment of the legislator; and our Government will become a government, not of laws, but of men. The best protection that the people can have against bureaucratic tyranny is strict adherence by our administrative agencies to the will and intent of Congress.

Whether the Board in administering the Wagner Act adhered closely to the intent of Congress does not merit lengthy consideration at this time. It is sufficient to note that the Board zealously administered the Wagner Act so that the basic congressional policies of that act, as well as objectives never intended by Congress, were reached. No right of labor, of duty, of management failed to receive the fullest enforcement by the Board.

The Board's administration of the Taft-Hartley Act, however, has been different. The difference is that under the Taft-Hartley Act the Board has narrowed the rights of management and the duties of labor which Congress defined in that act. This fact is evident after a review of only a few of the literally thousands of decisions issued by the Board.

In the Bonwit Teller case and similar ones the Board has established the doctrine that an employer may not address his workers on company time and property without granting the union an equal opportunity to address the workers on company time and property. This is an obvious limitation on the employer's right of free speech to communicate his ideas and arguments to employees. The Board has enforced the limitation rigidly. The Board, however, apparently recognizes no limitation on the right of unions to communicate their ideas and arguments to the workers. Thus, in the Maryland Drydock case¹ the Board

¹ *Maryland Drydock Co. v. N. L. R. B.* (183 F. 2d 538 (C. C. A. 4)).

ruled that an employer violated the Taft-Hartley Act by forbidding the distribution on its own premises of a union newspaper which characterized the company's president as a "vulture" and a "doublecrosser"; accused the company's officials of embarking "on a campaign of revenge that closely parallels some of the atrocious reprisals which were inflicted on defenseless people by that superman, Adolf Hitler"; and stated that the company believed "in the same kind of democracy that is used by Stalin"; that the company's officials were "Fascist-like in their thinking," "drunk with their own importance," and "oblivious to all concepts of human behavior because of their lust for still greater profits." The Circuit Court of Appeals for the Fourth Circuit at Richmond, Va., found the Board's position to be "so utterly lacking in merit as hardly to warrant consideration." After giving the Board a brief lecture on the obvious limitations of the right of free speech, the court added that "there is nothing in law or reason which requires [an employer] to allow the distribution on his premises of defamatory statements insulting to those who have charge of his business."

It seems elementary that our constitutional right to freedom of speech is nowhere more important than in the field of labor relations. It is obvious that industrial peace is impossible unless every effort is made by labor and management to communicate to the workers involved their respective positions and reasons for these positions. The Board, however, while carefully guarding the rights of labor unions to communicate to the workers, has so restricted management's concomitant right that this right is substantially impaired.

The circuit courts of appeals and the Supreme Court have done a great deal to curb some of the Board's inclinations in this matter. The Board, however, ignores the courts' admonishments in many instances. Thus, the Board has held in numerous cases that an employer violates the Taft-Hartley Act if, in any discussions with his workers, he permits even the most simple question to creep into his words. He cannot ask an employee if a union meeting was well attended. He cannot even ask why the worker feels he needs a union to represent him.² Six circuit courts of appeals³ have rejected the Board's doctrine on this matter and the Supreme Court⁴ has refused to review their decisions. The Board, however, continues its attempt to enforce the doctrine, brushing aside the courts' decisions. Employers have the unhappy choice of either accepting this attitude of the Board or engaging in expensive and lengthy litigation to obtain a court decision in every case.

Obviously this partisan treatment by the Board of the right of free speech is not in accord with the intent of Congress. That intent is expressed as clearly as possible in section 8 (c) of the Taft-Hartley Act.

Another area in which the Board has adopted a strict attitude toward employers and soft one toward labor unions is in the question of back pay for employees who lose wages because of discriminatory practices.

The Board has extended the act as far as possible to see that employees who lose wages because of an employer's unfair labor practices are reimbursed for such losses by the employer. Unions have also committed unfair labor practices which cause employees to lose wages. In these cases, however, the Board's enthusiasm for protecting the worker is somewhat dim, to say the least. Thus, in the Colonial Hardwood Flooring case⁵ some workers attempted to enter the plant to work during a strike. The union picket line, supervised by a representative of the union, kept the workers out of the plant by means of vicious physical violence. The Board held here that it lacked any power to compel the union to compensate the workers for the pay they lost as a result of this violence. The Board's excuse in this case is one which it must admit is highly technical. A scholarly and exhaustive examination of this technicality is contained in a recent article in the Yale Law Journal.⁶ The conclusion of this article is that the Board's position is incorrect.⁷ The congressional intent certainly did not contemplate that the Board should have the power to grant back pay for wages lost

² *Standard-Coosa-Thatcher Co.* (85 NLRB 1358)

³ *N. L. R. B. v. England Bros. Inc.* (201 F. 2d 395 (C. C. A. 1)); *N. L. R. B. v. Montgomery Ward & Co.* (192 F. 2d 160 (C. C. A. 2)); *N. L. R. B. v. Arthur Winer, Inc.* (194 F. 2d 370 (C. C. A. 7)); *N. L. R. B. v. Tennessee Coach Co.* (191 F. 2d 546 (C. C. A. 6)); *N. L. R. B. v. Ozark Drain Constructors* (190 F. 2d 222 (C. C. A. 8)); *Atlas Life Insurance v. N. L. R. B.* (195 F. 2d 136 (C. C. A. 10))

⁴ *N. L. R. B. v. Arthur Winer, Inc.* (344 U. S. 819).

⁵ 84 N. L. R. B. 563, 565; see also *United Mine Workers of America* (92 NLRB 916).

⁶ Vol. 62, No. 3, February 1953, p. 488.

⁷ "From the viewpoint both of statutory interpretation and of practical effects, the Board's position appears unsound" (ibid., p. 493).

due to an employer's acts, but no back pay where wages were lost due to the same acts committed by the union.

In the Board's decisions, violence committed by an employer or by a nonunion group is a serious matter. Thus, in one case⁸ the Board held an employer obliged to protect union adherents from minor violence committed by nonunion employees. In another case,⁹ however, a union picket threw a hammer through the windshield of a nonstriker's car. The Board in this case stated that, while it did not "condone" the use of the hammer, it did not find it so "flagrant" as to cause the union employee to lose his right to reinstatement. The Board then held that, after the employee put down his hammer and decided to return to work, the employer must accept him. It is obvious that these two cases do not reflect the congressional intent and discourage violence on the part of unions as well as employers.

The Board's attitude is not only soft with respect to violence committed on behalf of the union. It has gone further and held that the company violated the Taft-Hartley Act when it caused the arrest of strikers whom the company believed had engaged in violence on the picket line.¹⁰ Thus, on one hand, the Board holds an employer obligated to protect union adherents from the violence of non-union employees.¹¹ On the other hand, however, the Board holds that an employer who resorts to the courts to restrain violence or mass picketing and thus protect nonunion employees does so at his peril.¹²

The Labor Board has not only whittled down the rights of employers; it has seriously undermined the rights of the employees as well. Section 8 (a) (3) of Taft-Hartley, which authorizes the union shop, gives to all employees 30 days after a contract is signed to obtain membership in the union. Congress in conferring this right made no distinction between employees who had been members of the union before the union-shop agreement was signed and those who were not. The Labor Board itself made no such distinction for a number of years.¹³ Recently, however, the Board has ruled that only employees who were not already members of the union when the union-shop agreement was signed are entitled to the 30-day period of grace, thus depriving all other employees of a right plainly given them by Taft-Hartley.¹⁴ Taft-Hartley, in plain language, requires that all employees under a union-shop agreement be admitted to membership in the union on equal terms. Nevertheless, the Labor Board has recently held that a union may impose a higher initiation fee upon former members than upon new members. Thus, former union members were penalized for exercising the right given them by Taft-Hartley to withdraw from the union when there was no contract.¹⁵ The Board in this case sanctioned the discharge of the employee involved because he had refused to pay the union's initiation fee, which was twice as high for him as for new members. The rule has the inescapable effect of giving unions a drastic weapon with which to compel employees to remain union members even where the union is unable at the time to secure a union shop. The threat is that the member who quits the union when there is no union-shop requirement will have to pay twice as much or even more to hold his job if such a contract is later obtained. A more effective weapon in behalf of compulsory unionism is difficult to imagine.

Further evidence of union favoritism at the expense of the rights of employees is found in the Labor Board's arbitrary application of its 1-year rule. This rule, which was established, not by Congress but by the Labor Board, provides that for a period of at least 1 year after a union has been chosen bargaining representative by the employees the employer must bargain with it.¹⁶ The rule has its merits in terms of stability of bargaining relations, but it should not be applied in total disregard of the paramount right of employees to be represented by an agent of their own choosing. The Board, however, has sought to compel an employer to bargain with a union even though it was admitted that not a single one of his employees belonged to the union¹⁷ and, still worse, even where the

⁸ *N L R B v Fred P Weissman Co*

⁹ *Horn Manufacturing Co., Inc.* (83 NLRB 1177)

¹⁰ *W. T. Rawleigh & Co.* (90 NLRB 1924, 1925)

¹¹ See footnote 8, *supra*.

¹² See footnote 10, *supra*. See also *W. T. Carter* (90 NLRB 2020, 2023, 2024). *Atlantic Metallic Casket Co.* (91 NLRB 1225). *Texas Foundries, Inc.* (101 NLRB No. 249)

¹³ *Rock-Ola Manufacturing Corp.* (93 NLRB 1196). *Blue Ribbon Creamery* (94 NLRB 201). *Worthington Pump & Machinery Corp.* (93 NLRB 527).

¹⁴ *Krause Milling Co.* (96 NLRB 536)

¹⁵ *Food Machinery & Chemical Corp.* (99 NLRB No. 167, 30 LRRM 1171)

¹⁶ *Frank Bros. Company v. N. L. R. B.* (321 U. S. 702).

¹⁷ *Globe Automatic Sprinkler* (199 F. 2d 64 (C. C. A. 3))

employees had publicly repudiated the union by resigning from it to a man.¹⁸ As the circuit court at Cincinnati observed, in rejecting the Labor Board's position, the Labor Board "would exalt form over substance and make the interest of the agent [the union] of paramount importance rather than that of his principals [the employees]." ¹⁹ The rights sought to be protected by Taft-Hartley are the rights of employees, not those of unions.

The Board has infrequently demonstrated its indifferent attitude toward enforcing the prohibition against the closed shop contained in section 8 (a) (3) of Taft-Hartley. The issue of the closed shop was one of the hardest fought issues before Congress in 1947. No question can be raised that Congress resolved the issue by outlawing the closed shop. One might, therefore, expect the Board to be diligent in seeing to it that employees are not made the victims of illegal closed-shop arrangements. However, when the Labor Board had the opportunity to protect employees in the maritime industry and in the printing industry against illegal closed-shop arrangements, it refused to do so.²⁰ The Labor Board chose to take refuge in the legal technicality that, since there was no other evidence in the record that the unions involved had violated Taft-Hartley, it was not necessary to consider the illegality of their closed-shop demands.²¹ Legal technicalities, however valid, are a poor substitute for vigorous enforcement of employee rights. The Labor Board's attitude also explains, in part, the fact that the closed shop is still not uncommon in America. If the closed shop is to be successfully outlawed, as Congress clearly intended, a Board more sympathetic to such objective should be selected to do the job of enforcement.

The Board's partiality extends not only to unions over employers and employees; apparently the Board prefers the CIO to independent unions. For many years the Labor Board held that a contract of more than 2 years' duration could not serve as a bar to a new election unless it could be shown that longer agreements were customary in the industry. In accordance with this policy, the Board last October refused to allow an independent union to set up its 5-year contract in the automotive industry as a bar to an election requested by the CIO.²² But 4 months later, in January 1953, the Board permitted the CIO to set up its 5-year contract as a bar to an election in the automotive industry.²³ When the independent lampworkers made their request in October 1952, the substantial part of the automotive industry had contracts of 5 years' duration; yet the Board would not change its policy until asked to do so by the CIO.

In enacting Taft-Hartley, Congress intended to protect not only the rights of employers and employees but, above all, the rights of the American people. Because Communist-dominated unions are a menace to the security and welfare of the American people as well as of union members, Congress has sought to drive Communists from positions of leadership in the labor movement. The instrument chosen by Congress was the non-Communist affidavit requirement of section 9 (a) of Taft-Hartley. We have heard a good deal about the ineffectiveness of this requirement, but little has been said about the substantial responsibility of the Board for that result. Almost from the date of Taft-Hartley's enactment, the Board has so construed section 9 (b) as to render it ineffective to achieve the intent of Congress. The brief résumé that follows of the principal Board decisions relating to section 9 (b) supports this assertion:

(1) In October 1947 the Board held that Congress did not intend that the AFL and the CIO be required to file non-Communist affidavits under section 9 (h).²⁴ This decision was reversed 4 years later by the Supreme Court.²⁵ Now the Board is seeking to relitigate the cases that AFL and CIO unions lost against employers because of the Labor Board's erroneous decision.²⁶ In other words, the Board is attempting to save the unions from the appropriate consequences of having refused to obey the law in failing to file the non-Communist affidavits required by Congress.

(2) In 1948 the Board refused to permit an employer to prove that a union, in order to circumvent section 9 (h), had amended its constitution so as to abolish several offices whose incumbents, being Communists, were unable to sign

¹⁸ *N. L. R. B. v. Vulcan Forge* (188 F. 2d 927 (C. C. A. 6)).

¹⁹ *N. L. R. B. v. Reeder Motor Co.* (31 LRRM 2559).

²⁰ *International Longshore Workers Union* (90 NLRB 1021); *Chicago Typographical Union No. 16* (86 NLRB 1041).

²¹ *Ibid.*

²² *The Electric Auto Lite Co.* (Case No. 9-RC-1679).

²³ *General Motors Corp.* (100 N. L. R. B. No. 89).

²⁴ *Northern Virginia Broadcasters, Inc.* (75 N. L. R. B. 11).

²⁵ *N. L. R. B. v. Highland Park Mfg. Co.* (341 U. S. 322).

²⁶ *Magee Carpet Company* (issued Feb. 11, 1953).

the required non-Communist affidavits, and then allowed those officers to exercise the same powers as before.²⁷ Also in 1948 the Board refused to permit an employer to prove that one of the petitioning union's officers was in fact a Communist and that hence his affidavit under section 9 (h) was false.²⁸ Moreover, in 1950 the Board did the incredible by refusing to entertain a challenge to the authenticity of a non-Communist affidavit filed by Harry Bridges, despite his conviction, a few months earlier, of perjury for having sworn that he was not a Communist in applying for citizenship papers.²⁹ The Board arrived at these decisions by arguing that it was not the purpose of section 9 (h) to require it to investigate the authenticity or truth of the non-Communist affidavits filed with it. Although Taft-Hartley does not require the Labor Board to make such investigation, it is equally clear that nothing in the statute prohibits the Board from doing so. Indeed, the Board itself has admitted as much in a brief recently filed with the circuit court here in Washington.³⁰ Since the Board had the choice, it should have, in the interest of protecting the American people from Communist-dominated unions, chosen to hinder Communists from filing false affidavits rather than to shield them in doing so.

(3) In 1949 the Board held that an employer was not obligated under Taft-Hartley to bargain with a union whose officers had failed to file non-Communist affidavits.³¹ This was a sound decision because obviously Congress never intended that an employer be required to bargain with a Communist-dominated union. But 2 years later, the Board reversed itself, and held that an employer must bargain with such union unless he remembers to tell the union that he is refusing to bargain because the union has not filed the non-Communist affidavits.³² If the employer forgets to say these magic words, then he may be guilty of refusing to bargain with the union although at that time it might have been completely controlled and operated by Communists.

(4) In 1950 the Board held that a union whose officers had refused to file the required non-Communist affidavits could nevertheless prevent the employees from getting rid of it even to obtain a loyal and law-abiding union.³³ The effect of this decision is to enable a union to remain in power for as long as 5 years even though it has refused to obey the law, is probably Communist-dominated, and has been repudiated by the employees themselves. In startling contrast the Board forces employees to get rid of company-dominated unions, thus demonstrating that it regards company domination of unions to be a far greater menace than Communist domination.

For a long time congressional committees have been investigating communism in labor unions. Early in October 1952, the McCarran committee asked the officers of the Mine, Mill, and Smelter Workers (one of the unions expelled from the CIO) to reconfirm the non-Communist affidavits they had filed with the Board. They refused to do so on the grounds of self-incrimination. Did the Board act? No—it blithely ignored this activity of a Senate committee. However, less than 2 months later, a Federal grand jury made headlines by asking the Board to move against certain other Communist-dominated unions whose officers had likewise refused to affirm their Taft-Hartley affidavits. The Board acted, apparently being more respectful of a grand jury than of a Senate committee. It reversed the policy to which it has obstinately clung for 6 years and proceeded to investigate the truth of the non-Communist affidavits. The unions, however, by pointing to the Board's often-announced policy of not investigating these affidavits persuaded the district court to forbid the Board to do so. The Board has, of course, dutifully filed an appeal, which is routine in these matters. But appeals take time and these Communist-dominated unions continue to receive the benefit of Taft-Hartley.

In enacting Taft-Hartley, Congress also sought to protect the American people from excessive use by unions of their right to strike. Apart from the national-emergency strike provision, the instrument chosen by Congress was section 8 (d) of Taft-Hartley. The clear intent, as well as the plain language of section 8 (d), was to forbid strikes during the lifetime of a contract or, where a contract is terminable upon notice, for 60 days from the date of such notice. The Labor

²⁷ *Craddock-Terry Shoe Corp.* (76 N. L. R. B. 842).

²⁸ *U. S. Gypsum Co.* (80 NLRB 779)

²⁹ *Alpert and Alpert* (92 N. L. R. B. No. 127). *U. S. v. Bridges* (90 F. Supp. 973)

³⁰ *Herzog v. U. E. et al.*, now pending before the United States Circuit Court of Appeals for the District of Columbia. See pp. 40-43 of Board's brief

³¹ *Andrews Co.* (87 NLRB 379)

³² *New Jersey Carpet Mills* (92 NLRB 604)

³³ *Aluminum Company of America* (85 NLRB 915). See also 13th annual report of the NLRB, p. 32

Board itself so interpreted section 8 (d) as late as October 1949.³⁴ But 5½ months later, following the replacement of Republican Board Member Gray by Democratic Board Member Styles, the Labor Board reversed itself by striking from section 8 (d) a whole line which Congress had included in the section. In the Wilson case³⁵ the Labor Board sanctioned a strike to compel the company to increase wages further only 60 days after a contract setting wages for at least a year had been signed. The result of the Board's decision is to make every contract, regardless of its term of duration, good for only 60 days. In a further effect to expand the right to strike regardless of contract or statutory obligations, the Board has recently ruled that a union may strike in violation of a contract agreement not to do so if the strike is caused by the employer's unfair labor practices.³⁶ This doctrine, of course, makes mockery out of labor contracts.

The practice of law before the Board is a difficult matter—principally because precedence has little meaning where it interferes with granting advantage to a union. For example, compare these cases. In 1 case, the Board held an election in which 3 choices appeared on the ballot. The results of the election were inconclusive, i. e., no choice obtained a majority of votes cast. The Board's rules, therefore, called for a runoff election between the two choices which received the highest number of votes cast. The original election had been held among 1,998 employees, and, according to the rules, the runoff election should be held among the same employees. The third choice, however, pointed out that subsequent to the runoff the plant force had increased by about 1,000 employees, and that adherence to the rule would disenfranchise these new employees. The third choice moved, therefore, that the Board hold a new election, with it on the ballot, to enable all 3,000 employees to vote on the 3 original choices. The Board granted the motion in order to "better effectuate the purposes of the act."³⁷ In a later case, however, the identical situation occurred with a different result. There were three choices on the original ballot. The runoff rules would eliminate the third choice, and about 1,000 new employees would be disenfranchised. The motion was made to hold new elections to give all employees including the 1,000 new employees, a chance to vote on all 3 choices. The Board, in this case, permitted the 1,000 new employees to vote, but only to choose between the first 2 choices on the original ballot.³⁸ There was just 1 difference between these 2 cases. In the first case, the third choice on the ballot was a union; in the second case the third choice was no union. The Board gave no explanation of why the thousand new employees should be given an opportunity to vote for a union in the first case but not to vote for no-union in the second.

The history that I have outlined to you of the Labor Board's administration of Taft-Hartley has covered only a few of the obvious and readily discernible manifestations of the Labor Board's refusal to carry out the will and intent of Congress. The limitations of time and space do not permit a demonstration of the more subtle and devious channels which the Board has dug to circumvent the will and intent of Congress. A careful and extensive investigation of every aspect of the Labor Board's activities is the only way in which the full extent of its refusal to follow the wishes of Congress could ever be revealed. In my opinion such an investigation is urgently needed, is in fact, long overdue.

In closing, there is one further thought that I would have the committee consider. Why has the Labor Board in administering Taft-Hartley failed to carry out the will and intent of Congress? There may be various reasons, but in my opinion the principal reason is the fact that the Board as a whole has no sympathy for the congressional intent which was expressed in the act. In 1947 when this committee was considering the bills which subsequently became the Taft-Hartley Act, the Labor Board appeared before you and opposed almost every word, sentence, and paragraph of those bills. It found no good in any of them. Yet, it was to that same Labor Board that Congress entrusted the administration of Taft-Hartley. I sincerely hope that this Congress will not make this same obvious error.

³⁴ *Chicago Typographical Union No. 16* (86 NLRB 1041)

³⁵ *United Packinghouse Workers of America, CIO (Wilson & Co.)* (89 NLRB 311).

³⁶ *Mastro Plastics Corp.* (31 LRRM 1499).

³⁷ *International Harvester Company* (74 N. L. R. B. 507).

³⁸ *United Aircraft Corporation* (103 N. L. R. B. 106, 31 L. R. M. 1592).

Therefore, I would urge you this time to make the following changes:

1. Abolish the present Labor Board and reconstitute it with judicial functions only.
2. Give all its administrative functions and authority (over personnel, internal structure, and organization) to the Chairman named by the President.
3. Abolish the office of the General Counsel. Establish in its place a new and completely independent agency, the Office of the Administrator of the National Labor Relations Act; and invest it with all functions, investigation, prosecution, and enforcement, but excluding judicial functions, now possessed by the present Labor Board or General Counsel.
4. Transfer present Board personnel to the new agencies, their appointments to be at the pleasure of the head of the new agency until such time as he makes permanent (or probational) appointments to necessary jobs.
5. Establish a congressional subcommittee, empowered to subpoena witnesses under oath, to conduct a thorough investigation of every phase of the activities of the present Labor Board and General Counsel.

Mr. GRAHAM. A letter to the Honorable Leo E. Allen of Illinois from Mr. Norman C. Sleezer, general secretary of the Young Men's Christian Association, Freeport, Ill.

Chairman McCONNELL. Without objection, it will be received into the record.

(The letter referred to is as follows:)

YOUNG MEN'S CHRISTIAN ASSOCIATION,
Freeport, Ill., May 5 1953.

HON. LEO E. ALLEN,
House Office Building, Washington, D. C.

DEAR LEO: I am writing regarding an amendment to the Labor-Management Relations Act submitted to the House Committee on Education and Labor which would permit enforced collective bargaining for hospitals. I have been a member of the board of Deaconess Hospital here for some 9 years, during which time we have been able to keep the costs, as compared to other hospitals, on a very good basis. People entering the nursing profession have done so with a different motive than only monetary gains, and on this basis hospital service has improved greatly through the years.

If it becomes necessary for hospitals to enter into collective bargaining, it would undoubtedly mean that it would be very difficult for the organization to get good board members serving without pay, knowing the grief involved in such a procedure. There would immediately be increased costs, which could only be reflected through the patients.

It seems to me as though this rather followed the new concept of government which has set up the new Cabinet position, bringing education and welfare under that heading. This is to me a direction to which I am unalterably opposed. It can be the first step in the direction of Government control of education, and when that time comes we will be following the path that Germany followed to their destruction.

It will not be necessary for you to reply to this letter, Leo. I just wanted you to know my feelings about it.

Very sincerely,

NORMAN C. SLEEZER,
General Secretary.

Mr. GRAHAM. A supplemental brief of the Commonwealth of Pennsylvania in regard to H. R. 4274, a bill introduced by the Honorable Carroll D. Kearns of Pennsylvania, which has been filed by Robert E. Woodside, attorney general of Pennsylvania.

Chairman McCONNELL. Without objection, it will be received in the record.

(The brief referred to is as follows:)

SUPPLEMENTAL BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA IN RE H. R. 4274, FILED BY ROBERT E. WOODSIDE, ATTORNEY GENERAL OF PENNSYLVANIA; M. LOUIS RUTHERFORD, DEPUTY ATTORNEY GENERAL; GEORGE L. REED, SPECIAL DEPUTY ATTORNEY GENERAL

TO HON. SAMUEL K. MCCONNELL, JR., CHAIRMAN, AND THE MEMBERS OF THE COMMITTEE ON EDUCATION AND LABOR,

House of Representatives.

On April 14, 1953, a brief was filed by the Commonwealth of Pennsylvania in support of House bill No. 4274, wherein it was said:

"Three alternatives may be suggested for the amendment of the Labor-Management Relations Act, 1947, as follows:

"1 Amendments to section 2, clause (6) and (7), which will further define the terms 'commerce,' 'affecting commerce,' and 'burdening or obstructing commerce or the free flow of commerce.

"2. An amendment to section 10, clause (a) which will give the National Labor Relations Board broader powers to cede jurisdiction to State agencies in cases involving labor disputes affecting commerce, as suggested by Mr. Herzog.

"3 Amendments to sections 9 and 10, which will expressly confer concurrent jurisdiction to the States so that State jurisdiction in a given case is ousted by paramount Federal authority only when the dispute before the State agency has been before the Federal agency in a case involving the same labor dispute, or where the State is enforcing a policy which violates constitutional guaranties or is repugnant to the public policy proclaimed by the Congress of the United States, as provided for in House bill No. 4274"

On May 1, 1953, the Labor Committee of the National Association of Attorneys General testified before your honorable committee and suggested an amendment to title V of the Labor-Management Relations Act, 1947, as follows:

"Nothing herein shall be deemed to deprive States of jurisdiction to enforce laws and regulations not inconsistent with this law unless jurisdiction of the same controversy involving the same parties and issues shall have been undertaken by the National Labor Relations Board or other Federal agency designated in the act."

We are happy to note that the National Association of Attorneys General favors the principle of concurrent jurisdiction in order to resolve the conflict existing between the Federal Government and the States. In fact, section 2 of the Kearns bill uses language which is almost identical to the proposed amendment of the National Association of Attorneys General.

The Kearns bill, however, further insures concurrent jurisdiction by a separate amendment to section 9, which defines where State jurisdiction ends and Federal jurisdiction becomes paramount with respect to certification cases.

Furthermore, by amending section 10, clause (a) rather than inserting an amendment to title V, the Kearns bill provides for the repeal of the proviso presently existing in section 10, clause (a), and thereby removes the authority existing in the National Labor Relations Board to cede cases to the States.

The amendments contained in the Kearns bill are vitally important in order to resolve the existing conflict between the Federal Government and the Commonwealth of Pennsylvania. The Pennsylvania Labor Relations Act is presently a counterpart of the National Labor Relations Act as enacted in 1935. Possibly 75 percent of the cases which are processed before the Pennsylvania board involve only the investigation and certification of bargaining agents through elections conducted by the board. In cases involving charges of unfair labor practice, the overwhelming majority involve alleged unfair labor practices of employers. The number of cases involving charges of unfair labor practice against unions and employees is almost negligible. The effectiveness of the Pennsylvania statute in certification cases can only be assured by the amendment provided for in section 1 of the Kearns bill.

Pennsylvania's concern over the proviso to section 10, clause (a) is a construction which it may receive from the Supreme Court of the United States and the Supreme Court of Pennsylvania, which may defeat concurrent jurisdiction. We do not favor the elimination of the proviso to section 10, clause (a) because of any unwillingness to accept jurisdiction over a few additional cases which might be ceded to the Pennsylvania Labor Relations Board if the proviso remains in the Labor Management Relations Act. However, it is believed that the proviso to section 10, clause (a) will be as ineffectual in the future as it has been in the past. It may be pointed out that the members of the Pennsylvania Labor Relations Board and their counsel held a conference with counsel for the National Labor Relations Board several years ago, at which conference it

was conceded that the Pennsylvania Labor Relations Act and the Labor Management Relations Act, 1947, were so identical that jurisdiction over certification cases could properly be ceded by the Federal Agency to the Commonwealth of Pennsylvania. However, no agreement has ever been suggested by the National Labor Relations Board and, as far as we know, there is presently no agreement for the ceding of cases existing between the National Labor Relations Board and any State agency. Neither is there any assurance that any agreement for the ceding of cases will ever be made by the National Labor Relations Board which will be agreeable to the States.

The Kearns bill should be enacted into law because by striking out the proviso to section 10, clause (a), a serious obstacle to concurrent jurisdiction will be eliminated. It is apparent that if title V is amended to provide for concurrent jurisdiction and at the same time the proviso to section 10, clause (a) remains in the Labor Management Relations Act, 1947, a conflicting intent on the part of Congress will be manifest. In Pennsylvania, we are fearful of the construction which the courts might give to the Pennsylvania Labor Relations Act if on one hand the Federal statute sanctions concurrent jurisdiction and at the same time acknowledges Federal supremacy in all cases by permitting jurisdiction over any given case to be assumed by the State only when the National Labor Relations Board permits such jurisdiction to be exercised.

For these reasons, Pennsylvania favors the Kearns bill and does not endorse the amendment proposed by the National Association of Attorneys General.

In our former brief filed with your honorable committee on April 14, 1953, it was specifically urged that Federal supremacy in the field of labor relations will be safeguarded and made effective by the Kearns bill; that the Kearns bill will effectuate the policies of Congress as expressed and defined in the Labor Management Relations Act, 1947; that the Kearns bill will preserve the historic distinction with respect to regulations which are national and regulations which are local in character; and that the Kearns bill will provide a plan for permissible State regulation which was in successful operation in all States having labor relations acts analogous to the Federal statute until April 7, 1947, when the decision of the Supreme Court of the United States in *Bethlehem Steel Company v. New York State Labor Relations Board* (330 U. S. 767, 67 S. Ct. 1026), was handed down. The reasons urged in our former brief need not be repeated here. We remain of the opinion, as stated in the concluding paragraph of our former brief, that "the pathway to more harmonious relations in the settlement of labor disputes, and the avoidance of the conflict which now exists between the jurisdiction of the Federal Government and the States, does not lie in amendments which will limit Federal jurisdiction by curtailing Federal power, or in increasing the quantum of cases which the Federal agency may cede to the States. Industrial peace and more harmonious labor relations will be fostered and preserved by the enactment of House bill No. 4274, which defines with fairness and clarity the exact time and manner in which the jurisdiction of the States, under constitutional and legal statutes, may or will be ousted by the exercise of paramount Federal authority".

There is one additional point which requires emphasis, namely: The purpose and effect of the Kearns bill is not to infringe upon or regulate Federal policy. Your honorable committee is presently considering numerous and varied suggestions regarding amendments to the Labor Management Relations Act, 1947, but any determination Congress may make with respect to proposed amendments to the Federal statute, will have no bearing upon the purposes and policies of the Kearns bill. Whether the Congress will change the act to provide for increased regulation of labor organizations and employees or provide for less regulation with respect to labor disputes, the purpose and effect of the Kearns bill remains the same. Likewise, whether State regulation, as in Pennsylvania, is modeled closely upon the original National Labor Relations Act or provides for more extensive regulation of labor organizations and employees, the result is the same.

In a release to the public press on January 26, 1953, Hon. Robert A. Taft, United States Senator from Ohio, is reported to have said that, "The Supreme Court has gone so far as to almost say that the entire field of labor legislation has been preempted by the Federal Government. We've got to pass some sort of law to define the field so far as the States and Federal Government are concerned."

The sole purpose and effect of the Kearns bill is to define the field so far as the States and Federal Government are concerned by permitting State regulation of labor disputes, according to the constitutional and legal processes of the States, until such time as the National Labor Relations Board exercises its

inherent, paramount authority by assuming jurisdiction over the particular labor dispute which is in the process of adjudication by the State agency.

Hon. David M. Walker, secretary of the Department of Labor and Industry of the Commonwealth of Pennsylvania, and Hon. Darrell W. Smiley, chairman of the Pennsylvania Labor Relations Board, have had extensive correspondence with administrative heads of the labor department of the several States and the chairmen of the labor boards of the States having labor relations acts. Appended to this brief and marked "exhibit A" is a list of leading administrators who have approved the principles of House bill No. 4274, the Kearns bill. Many of these administrators have stated that they have also written Chairman McConnell or Congressman Kearns.

Copies of the letters referred to in exhibit A will be forwarded to the committee if requested.

EXHIBIT A

LIST OF ADMINISTRATORS OF THE STATES WHO HAVE APPROVED THE POLICY SET FORTH IN HOUSE BILL NO. 4274

- Hon. Ralph L. Burns, director of labor of the State of Alabama
- Hon. Ray H. Brannaman, chairman of the Industrial Commission of the State of Colorado.
- Hon. James T. Vocelle, chairman, Industrial Commission of the State of Florida.
- Hon. Marion E. Martin, commissioner of labor and industry of the State of Maine.
- Hon. William H. Riley, labor commissioner of the State of New Hampshire.
- Hon. Percy A. Miller, Jr., commissioner, Department of Labor and Industry of the State of New Jersey.
- Hon. Forrest H. Shuford, commissioner of labor of the State of North Carolina.
- Hon. H. R. Martinson, deputy labor commissioner of the State of North Dakota.
- Hon. Angelo E. Azzinaro, executive secretary, Labor Relations Board of the State of Rhode Island.
- Hon. William Fred Ponder, commissioner of labor of the State of South Carolina.
- Hon. William J. Flittie, deputy industrial commissioner of the State of South Dakota
- Hon. A. M. Johnson, director of the Department of Labor and Industries of the State of Washington.
- Hon. Charles Sattler, commissioner, Department of Labor of the State of West Virginia.

Mr. GRAHAM. A statement on behalf of the Middle Atlantic Newspaper Conference, which has been submitted by Theodore A. Serrill, chairman, of Harrisburg, Pa.

Chairman McCONNELL. Without objection, it will be received into the record.

(The statement referred to is as follows:)

STATEMENT ON BEHALF OF THE MIDDLE ATLANTIC NEWSPAPER CONFERENCE BY THEODORE A. SERRILL, CHAIRMAN, HARRISBURG, PA.

The Middle Atlantic Newspaper Conference is composed of the Maryland Press Association, representing 42 daily and weekly newspapers in Maryland; the New Jersey Press Association, representing 175 daily and weekly newspapers in New Jersey; the Publishers' Bureau of New Jersey, representing 14 daily newspapers in New Jersey; the New York State Publishers Association, representing 81 daily and Sunday newspapers in New York State outside the city of New York; the New York Press Association, representing 304 weekly newspapers in New York State, and the Pennsylvania Newspaper Publishers' Association, representing 353 daily, weekly, and Sunday newspapers in Pennsylvania, Delaware, New Jersey, and Maryland.

"Bogus" is not a violation of the featherbedding provision of the National Labor Relations Act because work is actually performed. So ruled the United States Supreme Court in the now famous case of *ANPA v. NLRB* (No. 53, October Term, 1952), and, thus this wasteful, make-work practice of the International Typographical Union is protected by the supreme law of the land.

Recent developments in the cost-ridden newspaper field reemphasize the need for relief from ITU practices which, if permitted to continue unchecked, could

eliminate from consideration any production improvements. The setting of "bogus" material furnished to newspapers in matrix form is just one phase of the problem confronting newspaper publishers. Just as important and equally as costly is the more recent ITU practice of requiring the reperforating of teletypesetter tape other than the tape containing "live news" releases or forbidding the use of it entirely. The same practice will be applied to any new process designed to place the news in the hands of the public at the lowest possible cost to the reader.

"Bogus" or "reproduction" is a practice in the newspaper business which has been imposed upon publishers for many, many years by the International Typographical Union. The term, until recent years, applied to the requirement that matter which was published in the newspaper and which was not originally set in type by composing room employees of the newspaper had to be reset by those employees after the matter was published. For example, an advertiser in the newspaper could supply his advertisement "copy" in the form of a matrix. A "matrix" or "mat" is a piece of cardboard into which has been impressed the type letters and engravings and which is used as a mold for the metal plate for use on the printing press which prints the newspaper. When advertisements are furnished in this form the composing room process of setting the type and preparing the advertisement is bypassed and the matrix goes directly to the stereotype department where the plate is made in preparation for final use in the printing of the newspaper. The "bogus" requirements are not changed even though the type from which the matrix was made was set by other ITU members.

The International Typographical Union permits the use of mats, but after the advertisement is published in the newspaper a tear sheet of the ad is placed in the composing room and must be reset by the composing room employees, errors corrected, and a calculation made of the time consumed by the employees in resetting the ad. The type is then taken out of the form and placed in the melting pot, unused, and the compositors paid for the time just as they are paid for their time in setting type which is actually used in printing the newspaper.

The latest "bogus" or "featherbedding" requirement being forced upon newspaper publishers concerns a new process for setting type by mechanical means. This process is known as teletypesetter. This equipment is composed of a perforator which is a machine with a keyboard very similar to the keyboard of a standard typewriter. When the keys of this perforator are depressed, a paper tape is perforated. This perforated tape is then fed into another device which is attached to the typesetting machine (linotype) and the lines of type are set automatically. The perforations in the tape causing the teletypesetter device to actuate the keys on the linotype machine. This process of producing type is much faster than the old method, which consists of composing-room employees operating manually the linotype keyboard, because a competent typist can perforate the tape at the rate of from 375 to 600 lines per hour. An operator on a linotype machine is capable of producing only 175 to 225 lines per hour, according to minimums which were set out in ITU contracts.

In order to speed up the production of the newspaper and in order to reduce production costs, a new system has been developed by the wire services (Associated Press, United Press, and International News Service) whereby perforated tape is supplied to newspaper offices ready to be fed into the linotype machine. This wire service tape is perforated from a central office and goes out to the newspaper offices which are hooked in to that particular circuit. Thus, the newspapers are supplied with their national "news" and "feature" articles in tape form which eliminates the necessity for perforation of the tape in the newspaper office, a saving of time and manual effort in the preparation of the newspaper for distribution to the reading public.

However, the International Typographical Union has thrown another block in the path of this technological improvement of newspapers. The ITU permits publishers to use tape which is perforated by outside sources but only that tape furnished by the recognized wire services and then only that tape covering daily news releases. In other words, feature material, which, for example, is that material containing expressions of opinions of nationally known columnists, cannot be used unless the tape is reperforated by employees of the newspapers using the tape. This reperforating of tape is just as serious a cost problem as the resetting of matter furnished in matrix form, and particularly so far the smaller newspapers which are the principal users of teletypesetter tape furnished by the wire services.

The question naturally arises as to why newspaper publishers permit themselves to become saddled with this featherbedding requirement of the Interna-

tional Typographical Union, especially since these requirements are embodied in collective bargaining contracts. A brief review of the International Typographical Union policies will explain.

The International Typographical Union exercises complete control over the local unions and its members through the general laws of that union and the mandates of its international officers and executive council. The members are forced to comply with these laws and mandates under threat of fine or expulsion, and the local unions in turn under threat of revocation of their charter. A member who is expelled loses his mortuary and pension rights incident to his membership in the ITU.

Historically, ITU members have been compelled to refuse to work in shops where nonmembers were working. If a member did so, he was faced with expulsion from the union.

The following is a provision which is included, in substance, in all ITU contracts:

"It is understood and agreed that the general laws of the International Typographical Union, not in conflict with National or State law or this contract, shall govern relations between the parties on conditions not specifically enumerated herein."

Further, the ITU General Laws for 1953, article III, provide:

"Sec. 2. No local union shall sign a contract guaranteeing its members to work for any proprietor, firm, or corporation, unless such contract is in accordance with international law and policy and approved as such by the international president. The officers, committees, and members are expressly prohibited from submitting to a union for vote or voting on any proposal of an employer or committee for a contract either written, verbal or implied, or any understanding whatsoever which has not previously been approved by the international president as being in compliance with ITU laws and policy and not in violation of civil law. No member holding active membership in any local union shall sign an individual or private contract with any employer, agreeing to work for any stated length of time, wages, or conditions. The union alone has the power to contract for conditions, wages, and hours."

Further on the question of contracts, article III provides:

"Sec. 4. Subordinate unions are required to submit to the international president for review and approval, as complying with requirements of international union laws, all proposals for a new contract, alteration, amendment, or extension of an existing contract in duplicate before presentation to the employer. No contract shall provide for automatic renewal on failure to notify either party thereto of desire to change or terminate the contract."

Thus, the international union bargains for wages, hours, and working conditions for its local unions and members.

On the question of "bogus" and jurisdiction over machines, methods, and processes, the pertinent provisions of ITU's General Laws have this to say:

Article VII—

"Sec. 1. None but members of the International Typographical Union shall be permitted to operate typesetting, typesetting, or material making machines. The International Typographical Union also claims jurisdiction over all duplicating machines, such as typewriters and varitypers, etc., the product of which is actually used in printing.

"Sec. 5. It is the unalterable policy of the International Typographical Union that only members in good standing shall be employed in installing, operating, and maintaining all mechanical devices which cast, compose, or impose type or slugs; perforate tape for use in composing or producing type or slugs; operated manually or automatically and wherever located."

The "bogus" or "featherbedding" provision of the ITU general laws is included in article IX:

"Sec. 2. The interchange, exchanging, borrowing, lending, or buying of matter, either in the form of type or matrices, between newspapers, between job offices, or between newspaper and job offices, or vice versa, not owned by the same individual, firm, or corporation, and published in the same establishment, is unlawful, and shall not be allowed, unless such type or matrices are reset as nearly like the original as possible, made up, read and corrected, and a proof submitted to the chairman of the office. Transfer of matter between a newspaper office and a job office, or a job office and a newspaper office, where conducted as separate institutions, and from separate composing rooms, owned by the same individual, firm, or corporation, is not permissible unless such matter is reset as nearly like the original as possible, made up, read and corrected, and a

proof submitted to the chairman of the office: *Provided*, That where an interchange of matter from an English publication to a foreign language publication, or vice versa, is desired, under the provisions of this section, such exchange shall be regulated by agreement between the employers and local unions interested. The time limit within which borrowed or purchased matter, or matrices, are to be reset shall also be regulated by agreement between the employers and local unions. This section shall not apply to original commercial composition purchased from union commercial trade composition plants or other union composing rooms when such composition is an integral part of production of a particular commercial job."

It is readily seen from the above provisions of ITU general laws that newspaper publishers are compelled to accept costly, and now legal, practices or face a strike which can close down publication entirely. Nearly all daily newspaper composing rooms are "closed shop" under union mandate in spite of the prohibition contained in the present National Labor Relations Act. Thus, the policies of the International Typographical Union are effectively carried down to the lower echelons of the local unions.

By way of illustration, the policy of the ITU as regards the use of outside teletypesetter tape is stated in the following extract from a letter from the ITU to a local union and shown to a Pennsylvania newspaper published during recent negotiations:

"No outside teletypesetter tape (i. e., any tape which is not produced by employees covered by your agreement) may be used under your present contract. Your present contract which specifically provides that 'no type or perforated tape or other form of composition produced elsewhere shall be used by the employer.' This means that no outside tape, including any tape furnished by the AP or anybody else, may be used under your present contract.

"If your union does desire to permit the use of outside tape furnished by the Associated Press for news items only, you may substitute the following for section 12, article II, of the union's proposal:

"Teletypesetter tape to set purely daily news items transmitted by the Associated Press may be used. The term 'news items' as used herein shall not include features. No other teletypesetter tape except tape perforated by employees covered by this agreement may be used."

"The ITU will not approve any agreement which would permit the use of any so-called canned tape."

The above means that if the publisher does not freely agree to the costly restriction on the use of outside perforated tape, the ITU will force his acceptance of its terms by threat of calling its members from their jobs.

Technological improvements in the publication of newspapers have long been hampered by ITU tactics. That the cost of reproduction of certain matter used in newspapers is tremendous can be seen from the testimony of one witness in the case of the *American Newspaper Publishers' Association v. National Labor Relations Board* when he said that "as long as there is bogus on the hook beyond the week as required in the contract, the foreman of the [composing] room cannot refuse to hire any extra who may show up for work." He testified further that if it were not for the "bogus" practice, his newspaper would hire "conservatively, five less" journeymen printers in its composing room.

In the original hearing of the above-cited case, the trial examiner of the National Labor Relations Board found that 10 percent of the local advertising at one Chicago newspaper was reproduced, and that the cost of setting bogus at various newspapers varied from \$150,000 per year at the larger newspapers to \$5,000 per year at the smaller newspapers; and that the elimination of the "bogus" practice would result in a reduction of labor costs in the composing rooms.

Composing-room costs were pointed up recently with the release of the results of an annual cost study conducted by the national newspaper trade magazine, Editor and Publisher. This survey which was reported in the April 11 issue, showed that on a typical daily newspaper of 50,000 circulation composing-room costs represented 21.05 percent of the total operating expenses. Composing-room costs were second only to newsprint (23.21 percent) and represented an increase of 15 percent over 1951. These rising costs are directly attributable to the policies and practices of the International Typographical Union, and, as shown above, featherbedding is a formidable contributing factor.

The Supreme Court agreed that the union's bogus requirement is wasteful, but pointed out that it is up to Congress to grant relief since the NLRA as it is

now written does not prohibit that form of featherbedding. The reasoning of the majority of the Supreme Court Justices was to the effect that resetting of material furnished in matrix form from outside sources was not prohibited by section 8 (b) (6) of the NLRA since "work" was performed even though such "service" is not wanted, not needed, and the publisher is unwilling to accept it. Mr. Justice Douglas, in his dissenting opinion said, "Their [the typesetters] 'work' is not only unwanted, it is indeed wholly useless. It does not add directly or indirectly to the publication of the newspaper nor to its contents. It does not even add an 'unwanted' page or paragraph. In no sense can I perceive it is a 'service' to the employer. To be sure, the employer has agreed to pay for it. But the agreement was under compulsion."

Since relief must be sought from Congress, section 8 (b) (6) of the National Labor Relations Act must be examined in light of the majority decision of the Supreme Court. That section provides that it shall be an unfair labor practice for a labor organization or its agents "to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed."

Congress is faced with the problem of amending the law so that abuses cannot continue and unions cannot avoid the prohibitions of the law by evasive means which accomplish the precise end at which the law is aimed.

Behind the Supreme Court decision, which relied on the reasoning that some sort of work was actually performed, lies the National Labor Relations Board decision in the same case which decided, among other things, that the "bogus" requirement was not "in the nature of an exaction" since it was part of a collective-bargaining agreement.

General Counsel Elisha Hanson, of the American Newspaper Publishers' Association, has appeared before your committee to present factual material and to make recommendations for consideration in the amending of the National Labor Relations Act. In amending section 8 (b) (6) of the act, Mr. Hanson recommended that language be adopted which would make it an unfair labor practice for a labor organization or its agents—

"(6) (A) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed, or for permission to use any process or machine; or

"(B) to cause or attempt to cause an employer to agree not to use any process or machine unless the product of such process or machine is reproduced by employees who are not employed on such process or machine in the regular course of their employment; or

"(C) to cause or attempt to cause an employer to enter into an agreement not to use any new process or machine."

The Middle Atlantic Newspaper Conference urges that this language be considered in light of all the circumstances and strongly recommends its adoption by Congress. The Middle Atlantic Newspaper Conference will be pleased to furnish a witness to testify on this matter if requested.

Newspaper publishers must be given relief so that they will not be burdened with costly practices which are not required, and so that they will be able to make unhampered use of technological improvements in the production of their newspapers. Congress must give that relief from unjust and wasteful procedures.

One Pennsylvania publisher expressed his opinion as follows:

"* * * Featherbedding has no place in an industrial system where legitimate employee benefits are becoming bigger and better every year.

"Featherbedding has no place either in the industrial history of a country whose destiny has been fashioned by men of aggressiveness and initiative, unafraid of honest work and unattracted by doubledealing and deception. Featherbedding is un-American and ought to be fought down by organized labor rather than fought for * * *."

Mr. GRAHAM. And a statement by the national affairs committee of the Pottstown Chamber of Commerce, Pottstown, Pa.

Chairman McCONNELL. Without objection, it will be received into the record.

(The statement referred to follows:)

STATEMENT BY THE NATIONAL AFFAIRS COMMITTEE OF THE POTTSTOWN CHAMBER OF COMMERCE, POTTSTOWN, PA.

The Labor and Management Relations Act of 1947, the so-called Taft-Hartley Act, was passed by the 80th Congress in response to public refusal to tolerate longer the abuses perpetrated under the National Labor Relations Act of 1935 or the so-called Wagner Act. The actions of the 80th Congress was understandable if you consider the Wagner Act was enacted chiefly to encourage and facilitate the organization and growth of labor unions and it was administered by the NLRB with that purpose in mind. Since the Wagner Act was found to be biased in favor of labor organizations and was a constant threat to industrial peace, it was replaced by the Taft-Hartley Act.

Senator Taft has now introduced 5 bills proposing 16 changes to the present Labor-Management Relations Act of 1947. These changes will effect both the administrative and judicial functions presently embraced in the Taft-Hartley Act. Before considering the changes it would be well to review what the present act was supposed to have accomplished and which was passed over the veto of the President in response to public demand. Contained in the present act we find in paragraph 201 of section 1 a statement of policy which reads as follows:

(b) "Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

"It is the purpose and policy of this act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and prescribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

With this understanding of the intent of the present act, let us consider the 16 changes contained in the 5 bills introduced by Senator Taft.

(1) Eliminating a provision which prevents economic strikers from voting in NLRB-supervised plant decisions to decide which union should represent the worker, or whether any union should. Taft would permit both the replaced strikers and their successors to vote.

This is 1 of 2 points mentioned by President Eisenhower during his campaign. The President thought both permanently discharged strikers and their successors should be permitted to vote in any election conducted by the NLRB to decide which union, if any, should represent the workers. The reason for eliminating the present provision which bars discharged strikers from voting was to prevent "union busting" in a slackening of the labor market.

This decision represents premature and unjustified concern and the present regulation should be retained unless and until a need for change is clearly demonstrated. To date we know of no company that has used this part of the act for the purpose of "union busting."

(2) Requiring representatives of management as well as labor to take non-Communist oaths.

We see no serious objection to the intent of this proposal. However, the oath required should be strengthened to prevent easy evasion. Under the present requirement, a union head need swear only that he is not a Communist as of the moment of oath-taking.

(3) Enlarging the NLRB from its present 5 to 7 members and stipulating that no more than 4 members could be from the same political party.

The Wagner Act established a board of three members to administer the act in 1935. This board admittedly administered the Wagner Act to encourage and facilitate the organization and growth of unions. The Taft-Hartley Act increased the board from 3 to 5 members to accomplish what Senator Taft now believes 7 members would accomplish.

The NLRB and its staff should be reconstituted and reorganized. It is doubted that the NLRB as presently constituted is able to honestly administer the Taft-Hartley Act as Congress wrote it and intended it to be administered

Many of the board members continue to be steeped in the one-sided philosophy of the Wagner Act despite the fact that the Taft-Hartley Act is a balanced national labor relations policy. By the addition of 2 new members without an overhauling of the board, 7 members could not accomplish desired results.

(4) Making the NLRB's General Counsel entirely independent of the Board and responsible only to the President.

This proposed change would further eliminate the Board from acting as prosecutor, jury, and judge as it functioned under the Wagner Act. The General Counsel of the NLRB should be independent of the Board. Concentrated complete power in one individual is incompatible with democracy.

(5) Extending the "free speech" provision of the law so that employer arguments against joining a union would not be reason for NLRB nullification of a plant election in which a union lost.

The present act now provides for "free speech" and the actions of the Board slow a consistent effort to lessen that constitutional right through the "captive audience" doctrine and other devices. The present provision guaranteeing employers the right of "free speech" should be strengthened.

(6) Forcing the discharge of Communists in a union shop.

Members of the Communist Party should be treated uniformly whether the employer has agreed to a union shop or functions under the open shop. This statement is in no way intended to be in agreement with the law permitting union shops.

(7) Reducing the "paper work" required of a union in complying with the financial and other reporting requirements of the law.

Financial and other reports required of the law should be made to the union membership.

(8) Eliminating a present provision that the NLRB must direct its attention first to getting our injunctions against secondary boycotts by organized labor.

The new amendment would not single out the union for first attention from the NLRB but would direct the Board to consider whether the employer also was using the secondary boycott.

We believe that the present provision should not be changed unless Congress sees fit to clarify the definition of a secondary boycott.

(9) Revising the present definition of the secondary boycott.

Under this amendment the secondary boycott ban would not apply in a case where a union at a plant refused to do work sent in from another plant involved in a strike. The amendment should be rejected. The secondary boycott including the mandatory injunction should be clarified and strengthened.

(10) Giving the employer who argued that he was not in interstate commerce, and thus not covered by the act, a quick NLRB review to settle the argument.

We do not believe this amendment is necessary but have no serious objection.

(11) Eliminating the present individual penalty—loss of seniority—for participating in an unauthorized or "wildstrike" strike.

Since the Taft-Hartley Act establishes a definite procedure under which unions may terminate labor-management contracts and serve notice of intention to strike, other types of work stoppages are illegal and participants are punishable by loss of seniority.

It would seem that to remove the penalty on wildcat strikes would be to encourage the very irresponsibility that is inherent in such strikes. This type of action resulted in the necessity for the enactment of the Taft-Hartley Act.

(12) Permitting NLRB hearing officers to make recommendations in labor disputes rather than, as at present, confining them to submitting findings of fact.

As stated before the Board and key members of its staff appeared to be steeped in the one-sided philosophy of the Wagner Act and we do not believe that the hearing officers could make such recommendations without prejudicing the case in advance, by placing the Government through its agent on one side or the other, before final settlement.

(13) Freeing employers in a union shop from the necessity of deducting from employees' wages any union fines or assessments levied against the union worker.

There is no necessity for deducting fines or assessments under the present act but by writing the amendment into the act certain employers would be relieved of this obligation even though they agreed to deduct such fines or assessments.

(14) Permitting building trades unions to make labor contracts with employers before a job began and have a union-shop agreement requiring the workers to join the union within 7 days instead of 30.

This amendment takes into account the relatively short-term jobs in the construction industry. The danger is that such a change might start a trend to recognize a new form of compulsory unionism.

(15) Setting up a 24 member advisory commission to observe the NLRB's administration of the act. Twelve members would be appointed by the Supreme Court, 6 by labor and 6 by management.

We do not believe such an advisory commission could aid the Board in formulating administrative policies. Apparently this advisory commission is without power to act in the event of maladministration.

(16) Stipulating that union welfare funds, to which employers contribute all or part, should no longer be valid until they have been examined by the Secretary of Labor and found to be within the spirit of the Taft-Hartley Act.

Administration of all welfare funds should be placed on a high legal concept of trust relationship, as other trust funds are required to be administered. Attempts to use welfare funds for political advantage or as an economic weapon or as an organizational device by labor unions should be prohibited.

Mr. GRAHAM. A statement from A. L. Spradling, president, Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America, A. F. of L.

Chairman McCONNELL. Without objection, the statement will be made a part of the record.

(The statement referred to is as follows:)

STATEMENT OF A. L. SPRADLING, PRESIDENT, AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY, AND MOTOR COACH EMPLOYEES OF AMERICA, AFL

The Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America is the dominant union in the field of transportation of passengers by bus, streetcar, and trolley coach. Our international union has a history of more than 50 years of successful collective bargaining in this industry. We have agreements covering the overwhelming majority of transit employees in the larger and medium-sized cities of the United States. It has been the policy of this international union for many years to encourage reference of all disputes to voluntary arbitration when direct settlement has been impossible. We not only provide in our standard agreements for the arbitration of grievances arising during the life of such agreements, but we also normally provide either by specific agreement or by long-established practice for arbitration of disputes relative to wages and working conditions upon renewals of our various agreements. We have even gone further than this. The constitution of this international union very specifically requires that when a dispute cannot be settled directly our local union officials and our international union officials must propose arbitration. There can be no authorized strike in the transit industry under our jurisdiction unless the employer refuses the normal processes of voluntary arbitration.

The special character of the work of employees we represent deserves mention. The great majority of transit workers are constantly dealing with their traveling public. They are on the streetcars or buses, away from direct supervision. They collect practically all the revenue of their employers. They are directly responsible for the safety of the vehicles they operate, of their own passengers, of other vehicles on the street, and of pedestrians. The difficulties of this work attract only men who are able and willing to handle this serious responsibility. It is because they are serious, responsible men that they and their union are so completely dedicated to the principle that every fair means must be used to avoid stoppage of public service. It is in that spirit that we have developed and maintained throughout the United States the method of voluntary arbitration. That spirit, we believe, should be met by the public and by government in a similar spirit of fair play and responsible dealing. We must tell you, with regret, that during the administration of the War Labor Board these procedures of arbitration were very greatly undermined. The State governments have failed even more to recognize the value of voluntary arbitration. It is against that background in the transit industry that we believe the proposed amendments to the Taft-Hartley law must be considered.

Our general position in connection with amendments to the Taft-Hartley law is in support of the position of the American Federation of Labor. We appear here with regard to a special problem with which our organization has had

extensive experience. That problem arises from proposals before you to permit the States to prohibit strikes in public utilities which are subject to Federal law, in the form of the Taft-Hartley Act. Such proposals are found in the Lucas bill, H. R. 3055, and the Curtis bill, H. R. 3163. The Lucas bill would go much farther than merely to permit the States to prohibit strikes in public utilities. We are concerned, however, at this point only with the operation of these bills as they apply to strikes in public utilities. We are strongly opposed to the enactment of H. R. 3055 or H. R. 3163 or any similar proposals.

When our present labor-relations law was under consideration by the Eightieth Congress our national labor policy was thoroughly reconsidered. Many changes were made in the Wagner Act. The provisions of that statute were supplemented in numerous respects. The Congress did retain, however, the institution of collective bargaining as the foundation of our national labor policy.

The preamble to title I of the Taft-Hartley Act states that—

"It is * * * the policy of the United States to eliminate the cause of certain substantial obstacles to the free flow of commerce and to mitigate and eliminate these obstacles when they have occurred by encouraging the practice and procedure of collective bargaining."

The national labor policy, as set forth in our present statute, is based upon the belief that the best way to prevent strikes is not to make strikes illegal when utilized for obtaining legitimate bargaining demands, but rather to render resort to strikes less frequent because the parties realize that overhanging the bargaining conference is the impending threat of a strike or lockout. Agreement is thought to be induced by the fear of economic loss, or loss of position, that may result if either labor or management attempts to enforce its demands by resort to economic sanctions.

Senator Taft made it clear during the course of the debates on the Taft-Hartley Act that that statute embraced the philosophy of collective bargaining and that that philosophy is bottomed on the right to strike:

"Basically, I believe that the committee feels, almost unanimously, that the solution of our labor problems must rest on a free economy and on free collective bargaining. The bill is certainly based on that proposition. That means that we recognize freedom to strike when the question involved is the improvement of wages, hours, and working conditions, when a contract has expired and neither side is bound by a contract. * * *

"We have considered the question whether the right to strike can be modified. I think it can be modified in cases which do not involve the basic question of wages, hours, and working conditions. But if we impose compulsory arbitration, or if we give the Government power to fix wages at which men must work for another year or for 2 years to come, I do not see how in the end we can escape a collective economy" (93 Congressional Record 3835 (1947)).

Our industry in the main has been and is covered by the present law. For the most part the companies in which our membership is employed are companies whose activities affect commerce. The transit systems in our cities service the great manufacturing enterprises of the Nation by bringing their employees to and from work. One of the first Wagner Act cases decided by the United States Supreme Court in 1937 was a case in our industry¹ where the Court upheld the jurisdiction of the National Labor Relations Board over the Washington, Virginia & Maryland Coach Co. Since that date the Board and the courts have repeatedly asserted jurisdiction over our industry both under the Wagner and the Taft-Hartley Acts.

The importance of our industry to the free flow of commerce¹ is no less significant today than it was in 1935, when the Congress enacted the Wagner Act, or in 1947, when the Congress enacted the Taft-Hartley Act. In 1947 there were proposals before Congress to require, under the Federal law, compulsory arbitration in the field of public utilities. It was recognized then, as it should be recognized now, that the Federal Government held the supreme interest in the field of public utilities whose activities affect commerce. The Congress has found that free collective bargaining is the best basic policy for the Nation's industries.

But State bureaucracies who reach for further State power, and employers who desire to defeat collective bargaining, are now proposing to you that in one of our great industries the States should be permitted to enact legislation which experience has shown prevents collective bargaining. This is not the first time

¹ *National Labor Relations Board v. Washington, Virginia & Maryland Coach Co.* (301 U. S. 142)

States have experimented in their legislative laboratories with compulsory arbitration or seizure laws. On the contrary, there is an instructive history of State interference with labor relations in public utilities.

In 1947, a number of our States enacted compulsory arbitration laws in the public utility field. Most States which enacted compulsory arbitration or seizure laws made such laws applicable to our industry. I venture to say that our experience with such laws has been more extensive than that of any other labor organization. Most of that experience has been extremely disruptive of traditional peaceful relations, and destructive of free collective bargaining.

Prior to the decision by the United States Supreme Court in the *Wisconsin Bus case*,² which held the Wisconsin compulsory arbitration law unconstitutional, we were forced to operate under some nine State laws prohibiting strikes in public utilities and providing for compulsion, either in the form of compulsory arbitration, compulsory factfinding, or seizure. There are lessons to be learned from that experience, with which we wish to acquaint the Congress. Briefly stated, we found that under the operation of such statutes:

- (1) Collective bargaining broke down;
- (2) Strikes were not prevented;
- (3) Labor disputes were not minimized, they were magnified, and normal industrial operations suffered from the resentment and lowered employee morale.

Chief Justice Vinson points out in the *Wisconsin case* how a State compulsory arbitration law operates to furnish an incentive to an employer not to engage in collective bargaining. The Chief Justice noted that the transit workers agreed to continue collective bargaining after a strike became imminent, but the company insisted upon the invocation of the compulsory arbitration features of the Wisconsin act. In that case, the company repudiated the agreement it had previously made for voluntary arbitration under accepted and tested procedures. The Chief Justice further noted that under that statute the transit company was able to avoid entirely any determination of certain union demands, and the arbitrators ruled that under the Wisconsin statute the matter of assigning workers to certain schedules was an employer's management right, and, in effect, not a subject for collective bargaining, although similar problems of work scheduling and work assignment are the appropriate subjects of collective bargaining under the Taft-Hartley Act. These instances are illustrative of a general attitude of many employers when the right to strike is taken away from our employees, and the employer may seek refuge under the shelter of a State law which enables him to escape the collective-bargaining process provided for in the Federal law.

The New Jersey experience prior to the decision of the Court in the *Wisconsin Bus case* is also instructive. A case study of the operation of the New Jersey law between 1947 and the end of 1949 was made by an impartial observer, Thomas Kennedy, then assistant professor of industrial relations at the University of Pennsylvania (*The Handling of Emergency Disputes, 1949 Proceedings, Industrial Relations Research Association*, pp. 14 through 27). The study confirms many of our own observations. One of our large transit systems which operates chiefly within the State of New Jersey is the Public Service Transportation Co. A group of our locals have been bargaining with that company for more than 30 years. From 1924 to 1947, there were no strikes or slowdowns. During that period, with the exception of some cases before the War Labor Board, the parties always reached agreement on their new contract terms without resort to the use of strikes or lockouts. Although the grievance procedure in their contracts provided for voluntary arbitration as a terminal point, arbitration was never employed.

In 1947, the first year in which the New Jersey compulsory arbitration law was on the books, the parties were unable to reach an agreement. This was the first peacetime negotiation since 1923 which had failed to result in an agreement. As Professor Kennedy has pointed out, that was only the beginning. In 1948 and in 1949, the major terms of the contracts between the parties were imposed on them by compulsory arbitration. The 1949 agreement resulted from a compulsory arbitration award, rendered in 1950, which expired at the end of January 1951. In 1951, the State seized the property, and as of February 1, 1951, initiated a wage adjustment, while operating that property, just a few weeks prior to the handing down of the *Wisconsin decision*. Thus, during the entire

² *Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Division 998 v. Wisconsin Employment Relations Board* (340 U. S. 383).

period from 1947 to the date of the Wisconsin Bus case, no agreement was the result of free collective bargaining without governmental imposition or intervention.

Nor was compulsory arbitration the only effect of the New Jersey law. Strikes occurred, despite the provision of severe penalties in the law. Professor Kennedy has pointed out (p. 21) that both management and labor in New Jersey have complained that the bargaining process has been hampered by the existence of compulsory arbitration.

The Indiana experience corroborates the experience in Wisconsin and in New Jersey. On the Indianapolis transit system there had been a prewar history of voluntary agreement. The compulsory arbitration law in Indiana was enacted in 1947. Beginning in 1948, there were two successive compulsory arbitrations, and then one voluntary agreement, prior to the Wisconsin Bus decision. And, there were public-utility strikes in Indiana in spite of the attempt to outlaw them.

Why does collective bargaining break down under State laws introducing imposed settlements or the element of seizure? Senator Taft, on discussion of the Taft-Hartley Act, said:

"If we begin with public utilities, it will be said that coal and steel are just as important as public utilities. I do not know where we could draw the line. So far as the bill is concerned, we have proceeded on the theory that there is a right to strike and the labor peace must be based on free collective bargaining. We have done nothing to outlaw strikes for basic wages, hours, and working conditions after proper opportunity for mediation.

* * * * *

"We did not feel that we should put into the law, as a part of the collective-bargaining machinery, an ultimate resort to compulsory arbitration, or to seizure, or to any other action. We feel that it would interfere with the whole process of collective bargaining. If such a remedy is available as a routine remedy, there will always be pressure to resort to it by whichever party thinks it will receive better treatment through such a process than it would receive in collective bargaining, and it will back out of collective bargaining" (93 Congressional Record 3835-3836 [1947]).

Under compulsory arbitration, one factor is the fear of each party to suggest a basis for settlement, lest the offer be used as a jumping-off place by the other party for securing a better settlement, through compulsory arbitration. There is also the unwillingness of negotiators on both sides to assume responsibility for a settlement, when there is a possibility that better terms might be secured through compulsory arbitration. In addition, the number of demands with which the parties enter negotiation may be multiplied.

State compulsory arbitration laws tend to create a mental climate in which one party prepares to force, the other expects to have to submit to, governmental fixing of wages and working conditions. In Virginia, where there is a State-seizure law, there is clearly a tendency to prepare not for negotiations, but for seizure.

If the Federal Government were to turn its back on the problem of labor relations in the public-utility field, it certainly would not promote industrial peace. In short, compulsion by State governmental decree is no more an acceptable answer for labor disputes in public utilities than in any other sector of our economy. State compulsory arbitration and State seizure are both offensive to our deep-seated feeling for freedom. Collective bargaining cannot live alongside either seizure or compulsory arbitration. Nor can compulsive techniques be imposed on public utilities to the exclusion of other areas of our economy. State compulsion does not settle labor disputes in public utilities. It magnifies and embitters those disputes.

It is persuasive that the procedure of true collective bargaining which the Congress, the public, labor, and management, all favor has broken down in States which employ compulsion. There is no sound reason for discriminating against public-utility employees by denying to them in any fashion the rights of collective bargaining, while granting it to their fellow employees in American industry. There is no good reason why public-utility employees should be extended, by Federal law, the rights or organization and collective bargaining with one hand, and be deprived of them with the other by State prohibitions of the right to strike.

And it should be noted that there are compelling reasons of economy for continuing to assert the Federal policy as to labor relations over public-utility employees. Presumably, transit systems which cross State lines, such as those

which operate between Kansas City, Mo., and Kansas City, Kans., and from points in Virginia and Maryland to the District of Columbia, would not be subject to State regulation of their collective bargaining. The Federal administrative processes would be applicable, of course, to labor relations in such transit operations. It would be sensible and economical to have a uniform rule applicable to all public-utility transit employees.

Your committee may inquire, "What may be done to insure the maintenance of uninterrupted service in public utilities if the State, or some other agency, is not free to impose a solution?" The short answer to this question is in the voluntary measures for the maintenance of industrial peace that have long been available in the transit industry, and have long been used with outstanding success. This organization has long recognized the interest of the public in the maintenance of uninterrupted service. That recognition is exemplified by a provision in the organic law of this organization, its constitution and bylaws, to the effect that no strike will be sanctioned by our international organization, and no strike benefits will be paid, unless and until our local organization has offered voluntary arbitration of the dispute, and the employer has refused to arbitrate. We have thus, from the very beginning, made voluntary arbitration an integral and vital part of our collective bargaining.

Many, if not most, of our agreements include a provision for the arbitration of any and all disputes between the parties. Voluntary arbitration of this kind is only an extension of the free collective-bargaining process; the parties simply call in a third person, in whom they each have confidence, to make up their minds for them, to reconsider their different positions, and thus provide for a "binding" settlement. Whenever these arbitration provisions are utilized, as they normally are, industrial peace is maintained in our industry. These contractual provisions have a long and successful history in the transit industry.

Of late, however, there has been a tendency on the part of some employers in our industry to refuse to resort to voluntary arbitration, and the very State laws which it is proposed Congress permit the States to enact have encouraged this tendency. Thus, in a very recent dispute involving the Washington, Virginia, & Maryland Coach Co., the procedure of the State seizure law was used as a shield by the employer to protect its evasion of a clear contractual agreement to arbitrate disputes over the terms of new agreements. The legal camouflage that was used was the device of purporting to terminate the agreement, and thereby give rise to a claim that the duty to arbitrate the next agreement had likewise been terminated. The relevant contractual provisions provided as follows:

"SEC. 24. Except as herein otherwise expressly provided, this agreement shall be in effect from August 20, 1951, until and including November 23, 1952, and shall remain in effect from year to year thereafter unless changed or terminated as herein provided. Either party desiring to negotiate any changes or modifications in this agreement, to become effective at the end of the initial term or any annual extension thereof, shall notify the other party in writing of its desire to enter into negotiations for that purpose at least thirty (30) days prior to the expiration of the initial term or any extension thereof. In the event that the parties cannot reach an agreement on the proposed changes or modifications, then such changes or modifications as either party may desire to have arbitrated shall be arbitrated as provided in section 2 (b) of this agreement. Either party desiring to terminate this agreement at the end of the initial term or any annual extension thereof shall notify the other party in writing of such desire at least thirty (30) days prior to the expiration of such initial term or any annual extension thereof."

When it became apparent that direct negotiations would not result in an agreement, the local invoked the arbitration clause and offered to arbitrate. The company bluntly refused. There was no way to enforce the agreement to arbitrate except to attempt to enforce it through a strike. The Virginia seizure law, however, provides, in effect, that the State is, through its weight on the side of the employer, to break the strike. In this situation, because of that law, the employer was able to repudiate his own agreement to arbitrate. The settlement finally brought about left in its wake nothing but resentment, frustration, and a lowered employee morale.

President Meany, of the A. F. of L., has said of voluntary arbitration:

"It is my firm conviction that this procedure is an effective remedy for labor-management strife in industries which directly affect public safety and the national welfare. Instead of seeking to force compulsory arbitration upon labor and management through legislation, those who have a real interest in industrial peace should endeavor to have both labor and management accept the time-tested,

practical, and constructive machinery of voluntary arbitration when collective bargaining breaks down."

Voluntary arbitration is the American way for the settlement of labor disputes if collective bargaining fails. Compulsory arbitration is quite another thing. Seizure is quite another thing. Congress should continue now, as in the past, to promote free collective bargaining in public utilities. Congress should go further, and encourage voluntary arbitration as the appropriate method for the settlement of labor disputes in the transit industry, and as the final step in the whole process of free collective bargaining.

The Federal law has, we think, failed to tap the full potential of collective bargaining and voluntary arbitration in the transit industry. We have some affirmative proposals to make, consistent with American traditions of freedom, which will enhance the possibilities of collective bargaining in our industry, and plumb the full potential of the voluntary arbitration process in that industry. These are:

- 1 We suggest that the Federal law state as a policy not only the encouragement of collective bargaining, but also the encouragement of the process of voluntary arbitration where direct negotiation fails.

2. We suggest that the Federal Mediation and Conciliation Service be required to employ a corps of mediators to work in the field of mediation in the public mass-transportation industry, with a view toward their possessing or developing special skills and expertness in that field.

The mass transportation industry is a complicated one. The transit industry has its own special problems, its own vocabulary, its own labor-relations history, its own folklore. Mediators need specialized experience in the field of transportation of passengers by motorbus or streetcar. For a mediator to do an effective job in an industry of the complexity of the transit industry, there is needed continuity of attention to the industry and its problems. The mediator needs a knowledge of the history of wage rates and working conditions in the industry, as well as of the history of organization. Further, he needs to keep pace with the day-to-day changes in wage rates and labor conditions. Otherwise, he cannot effectively mediate disputes in the industry. To gain the confidence of the parties, he needs to have as much knowledge about their problems as the parties themselves do. To be persuasive in recommending settlements, he must frequently know more than they do, at least as to some phases of their labor disputes. A special corps of mediators working exclusively in the transit field can give that continuity of attention which can render mediation effective in our industry. Such a corps can be useful in making collective bargaining work.

3. The mediators should be required, where mediation is unsuccessful, to recommend to the parties voluntary arbitration.

Where the mediators are required, as the final step of the mediation, to recommend arbitration, the force of the mediator's recommendation is considerably greater than where he makes such a suggestion in the absence of a statutory provision. Where the mediator may report that one or both parties have refused arbitration, public opinion has an opportunity to crystallize with reference to the regard, or lack of regard, of the parties for the public interest in connection with this particular dispute. In brief, it gives the mediator a more powerful weapon for inducing arbitration that he would otherwise have.

- 4 The Director of the Federal Mediation and Conciliation Service should be empowered, in his discretion, to make public, subsequent to a recommendation by a mediator that there be arbitration, the refusal of one, or both, of the parties to arbitrate a particular unsettled dispute.

This type of provision furnishes a frame of reference for the mediator which affords greater leverage to him in securing an agreement between the parties to arbitrate. With the knowledge that a refusal to arbitrate may be publicized, the mediator would be able to bring the public interest and public pressure more effectively to bear upon the parties.

Labor disputes in the transit industry are unique because of the character of the men in the industry, because of the long experience with voluntary arbitration, because of the provisions in the constitution of the union and in existing collective-bargaining agreements for submission of all unsettled disputes to arbitration. The sensible governmental attitude should be to encourage and develop these arbitration procedures, rather than to relinquish jurisdiction to a diverse patchwork of State legislation inconsistent with the objectives of the Federal law.

There is one other problem arising in connection with the act which requires some comment. There have been suggestions made by the association representing employers in our industry, the American Transit Association, that

the definition of the term "supervisors" in the act be amended to expand the scope of the definition so as to include certain employees of several transit companies in our industry whom locals of our union represent. Particular reference was made to the inspectors. It was charged that the decisions of the National Labor Relations Board have construed the term "supervisor" so precisely "as to emasculate the supervisory forces of" many transit companies (30 Congressional Record 4147, Mar. 31, 1953). These charges are without foundation.

The duties of inspectors, dispatchers, and depot clerks vary from company to company. In some situations these employees are, in fact, supervisory employees, and in other cases they are not. The inspectors, dispatchers and depot clerks our organization has sought to represent in cases before the NLRB, where that agency has found them not to be supervisors, are not supervisors.³ The discussion which follows relates in a general way to the duties of employees who were involved in those cases.

The inspectors are employees who are normally promoted from the position of bus or streetcar operator. Their responsibility is, speaking generally, twofold: (1) To make written reports to the employer of incidents wherein they find violations by bus operators of safety rules or regulations; and (2) to maintain schedules. Such direction and control as these employees exercise is concerned primarily with equipment, rather than personnel. They do not hire, fire, discharge, discipline, or effectively recommend discipline of other employees. The inspectors do not, as was stated by a witness before your committee, have "complete authority" to remove a man from service. "In extreme cases involving the public safety such as operating a vehicle while under the influence of alcohol, the inspector is required to remove the operator from the vehicle and place him in the hands of an official, the police, or take him to the employer's doctor." (*Capital Transit Company*, 98 N. L. R. B. 141, 144-145).

Such discretion as these inspectors exercise is routine. In substance, these employees watch the operation of the buses, check the operators as to the maintenance of schedules and observance of other company rules, and make factual reports as to any violations. These reports in turn serve as the basis for an independent investigation by the management.

There are other employees, such as dispatchers and depot clerks, who are represented by this organization. These employees, too, are very often former bus or streetcar operators. Their duties likewise are concerned primarily with equipment, rather than with personnel. The depot clerks prepare assignment sheets for operators who are to be given extra work. The actual mechanics of the selection of the operators for the runs on the various routes are rigidly controlled by contract or custom. Usually they issue equipment, such as tokens and transfers, when operators leave on runs, and may receive equipment and receipts on return of the operators from their runs. They do not hire, fire, discharge, discipline, or effectively recommend discipline.

Detailed descriptions of the duties of various types of dispatchers may be found in *Capital Transit Company* (98 N. L. R. B. 141), *Baltimore Transit Company* (92 N. L. R. B. 1260), *New England Transportation Company* (90 N. L. R. B. 539).

The employees discussed above are not policymaking employees. They have the same problems as to their wages and working conditions and hours of work as do bus operators and maintenance employees, who are usually regarded as rank and file and are represented by our organization. Their record, when represented by our organization, leaves no doubt as to their loyalty to management, and as to their proper carrying out of their duties. The American Transit Association did not claim that these employees were any the less trustworthy because of their membership in our organization, and there would be no substance to any such claim if such a claim were made.

The statement that because the National Labor Relations Board has ruled such employees not to be supervisors the employer has been deprived of his supervisory staff to that extent is frivolous. These employees continue to do the same job they did before the National Labor Relations Board made it clear that they were not supervisors within the meaning of the act. These employees are in need of job protection, job security, and union representation. There is no

³ *Capital Transit Company* (98 N. L. R. B. 141 (inspectors, depot clerks, dispatchers)) ; *Union Street Railway Company* (93 N. L. R. B. 782 (inspectors)) ; *Baltimore Transit Company* (92 N. L. R. B. 1260 (radio dispatchers)) ; *Baltimore Transit Company* (92 N. L. R. B. 688 (supervisory assistants)) ; *New England Transportation Company* (90 N. L. R. B. 539 (dispatchers)).

evidence that where this union represents such employees there has been any impairment of the efficiency of the operations of their employers.

There was a suggestion from the American Transit Association's witness before your committee that a constitutional provision of this organization which prohibits members from undermining fellow employees interferes with the proper performance of the duties of inspectors with reference to operators. That constitutional provision is, of course, not intended to mean that an inspector, or some similar employee, should not properly perform his job. That section has no reference to such a situation, and, in fact, of the many inspectors this organization represents, no case has been called to our attention in which it has been suggested that the constitutional provision has been so understood or applied. Our members know what the job of inspector requires. They know that it is important to the efficient, successful operation of the company that that job be done well. And the record of representation of such employees by our organization will show that it has been done well.

We strongly oppose any amendment to the term "supervisor," as defined in the act, which would deny the rights of collective bargaining to substantial numbers of employees such as inspectors and the like. If anything, the scope of the existing definition is too broad and should be narrowed.

Mr. GRAHAM. A letter and statement from Vincent F. Morreale, general counsel, International Hod Carriers' Building and Common Laborers' Union of America, Washington, D. C.

Chairman McCONNELL. Without objection, the information will be made a part of the record.

(The letter and statement referred to follows:)

INTERNATIONAL HOD CARRIERS' BUILDING AND
COMMON LABORERS' UNION OF AMERICA,
Washington 5, D. C., May 7, 1953.

HON. SAMUEL K. McCONNELL, Jr.,

*Chairman, Committee on Education and Labor,
Washington, D. C.*

DEAR CONGRESSMAN McCONNELL: I enclose herewith suggestions to amend certain sections of the National Labor Relations Act, as amended, with reference to the building and construction industry. I submit it as an offer of some language that may be considered in connection with this complex problem.

This proposal is the result of much collaboration with counsel of several of the largest national and international unions affiliated with the American Federation of Labor and the building and construction trades department thereof. In my opinion, it does not contravene the position taken by the American Federation of Labor or the building and construction trades department in their appearances before your committee. It rather supplements their positions by proposing concrete suggestions.

I will attempt to briefly explain each suggestion.

Suggestion (a) proposes an amendment to section 8A, which would make it lawful for an employer engaged in the building and construction industry to recognize and bargain collectively with a labor organization as the exclusive representative of the employees to be employed on projects undertaken by such employer, with four provisos specifically outlined. This amendment would overcome the basic difficulty that arises from the fact that the construction industry is unique in the sense that existing legal requirements cannot be processed for all practical purposes. Yet the provisos protect instances where employees have voted in an election for some other organization. The last proviso would require such labor organizations to comply with the so-called filing provisions of the present act.

Suggestion (b) would provide for the union shop without prior certification, with certain protective provisions outlined in the proviso to this suggestion. Under this suggestion there is also the proposal that a minority group could test the collective-bargaining agency recognized under an existing agreement.

There is in (c) a suggestion to strike out from section 8 (b) (4) (D) the language quoted in the suggestion, because such existing language presupposes a representing certification by the Board and in its place substitute the language—

"Unless such employer is failing to conform to a decision of the Board under section 10 (k) or to an agreement for the peaceful adjustment of jurisdictional disputes or any award thereunder."

Suggestion (d) proposes an amendment to section 10 (k) only to the extent of adding a proviso that if a dispute is not settled by an agreement or other means of adjustment as presently provided in 10 (k), then certain standards are outlined which should be followed by any hearing officer of the National Labor Relations Board, namely, the customs and practices of the industry, the charters of labor organizations, voluntary national or local agreements, and the decisions of any private body established for the settlement of jurisdictional disputes within the industry.

The last suggestion proposes an amendment to section 303 of the present act by adding certain language at the end of section 8 (b) (4) (A), which has to do with at-the-site action, to avoid the cumbersome situation at the site of a project, of unionmen being compelled to work alongside nonunionmen.

In brief, these suggestions cover three points:

(1) permitting the negotiation and consummation of agreements in the building and construction industry prior to actual employment, with union security rights;

(2) provides proper standards in the event of petitions before the Board under 10 (k) in connection with jurisdictional disputes; and

(3) avoids the present cumbersome situation, at the site of a project, which could compel unionmen to work alongside nonunionmen, on the grounds of secondary boycott.

It is my belief that these affirmative suggestions would alleviate this complex problem and would permit the building and construction industry to operate within the law, in an efficient and practical manner.

Respectfully submitted.

VINCENT F. MORREALE,
General Counsel.

(The statement referred to is as follows:)

SUGGESTIONS TO AMEND CERTAIN SECTIONS OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED, WITH REFERENCE TO THE BUILDING AND CONSTRUCTION INDUSTRY

These suggestions are the result of collaboration between general counsel of several of the largest national and international unions affiliated with the Building and Construction Trades Department of the American Federation of Labor.

The enactment of these suggestions into law would make it possible for the construction industry, both employers and union representatives of their employees, to operate the industry in a practical and lawful manner.

(a) After section 8 insert the following new section:

"Sec. 8A. (a) It shall be lawful, notwithstanding any provision of this Act or of any other law of the United States, or territory thereof, or of any State, for an employer (primarily) engaged in the building and construction industry to recognize and bargain collectively with a labor organization as the exclusive representative of the employees to be employed upon the projects undertaken by such employer within the jurisdiction of such labor organization provided that—

"(1) No other labor organization has been certified as the bargaining representative of employees covered by such negotiations;

"(2) the employees in a bargaining unit covered by such agreement have not within the preceding twelve months voted not to be represented by such labor organization, in an election conducted under Section 9;

"(3) members of such labor organization are to be employed upon the projects undertaken by such employer within the craft or job classifications covered by the agreement; and

"(4) such labor organization is not otherwise established, maintained, or assisted by any action defined in Section 8 (a) as an unfair labor practice and has within the preceding twelve months received from the Board notice that it has complied with all the requirements imposed by Section 9 (f)

(g) (h).

"(b) An agreement executed with a labor organization pursuant to this subsection may require as a condition of employment membership therein on or after the 7th day following the beginning of such employment or the effective date of such agreements whichever is the later: *Provided*, That no employer shall justify any discrimination against an employee for nonmembership in a

labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

"(c) An agreement executed pursuant to this section shall not bar the investigation and determination of a question of representation upon a petition filed in accordance with Section 9 (c) (1) unless the labor organization was certified, prior to the execution of such agreement as the representative designated by a majority of the employees in the appropriate bargaining unit."

(b) At the end of section 9 (b) add the following paragraph:

"In the case of mechanics and laborers employed by an employer (primarily) engaged in the building and construction industry the Board shall wherever possible define the appropriate bargaining unit exclusively in terms of the crafts or trades of such mechanics and laborers and in the event that other definitions shall be issued it shall be amended from time to time upon request of any party in interest to conform to any decision of the Board under section 10 (k) or any final award of a private body established for the settlement of jurisdictional disputes which is binding upon the parties to the representation proceeding."

(c) In section 8 (b) (4) (D) strike out the words: "unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for the employees performing such work" and substitute the following, "unless such employer is failing to conform to a decision of the Board under section 10 (k) or to an agreement for the peaceful adjustment of jurisdictional disputes or any award thereunder."

(d) In section 10 (k) insert between the first and second sentences: "Provided, That if there is reasonable cause to believe that the alleged unfair labor practice violates any agreement for the peaceful adjustment of jurisdictional disputes or any award made pursuant thereto, the Board shall proceed without a hearing or determination under this subsection. In determining a dispute in the building and construction industry over the assignment of work between the members of two or more labor organizations following different crafts or callings the Board shall disregard any prior definition of the bargaining unit and shall be governed by the customs and practices of the industry, the charters of labor organizations, voluntary national or local agreements, and the decisions of any private body established for the settlement of jurisdictional disputes. The Board's determination of such a dispute shall designate the craft or calling to which the work is awarded by reference to the labor organization involved, but such determination shall not be interpreted as justifying discrimination in violation of section 8 (a) (3) and 8 (A) against persons following such craft or calling."

Amend section 303 in the same way.

(e) At the end of section 8 (b) 4 (A) add the following: "who is not engaged, at the site of such concerted activity, in a construction project or similar common enterprise together with such employer"; or, "unless such person is engaged" (etc.).

Chairman McCONNELL. Tomorrow is the final day of the hearings. We will have at 10 a. m. the National Labor Relations Board members, the General Counsel, and the chief trial examiner.

It sounds like an interesting session.

The committee will adjourn until 10 a. m., tomorrow.

(Whereupon, at 12:10 p. m., the committee was recessed, to be reconvened at 10 a. m., Friday, May 8, 1953.)

LABOR-MANAGEMENT RELATIONS

FRIDAY, MAY 8, 1953

HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met at 10 a. m., pursuant to recess, in room 429, House Office Building, Chairman Samuel K. McConnell, Jr., presiding.

Present: Representatives McConnell, Gwinn, Smith, Bosch, Holt, Rhodes, Wainwright, Frelinghuysen, Barden, Perkins, Elliott, Landrum, Metcalf, and Miller.

Present also: John O. Graham, chief clerk; Fred G. Hussey, minority clerk; Edward A. McCabe, general counsel; Jock Hoghland, assistant general counsel; Russell C. Derrickson, chief investigator; and Ben H. Johnson, investigator.

Chairman McCONNELL. The hearings will please come to order.

As was stated earlier when members of the Board were here, and you, Mr. Bott, were here, I said I anticipated at that time that during the course of the hearings various witnesses would mention certain situations and we would desire to question you further on the matters involved.

Subsequently, we have found that the hearings have brought out certain questions which we wish to ask about, and also certain specific employees have been mentioned. It is my thought—and I stated it earlier—that those employees whose names had been mentioned specifically in a critical way should have an opportunity to submit a statement in answer to the criticism of those employees, individually.

With that background, we sent out a letter as of April 30, saying:

DEAR MR. BOTT: Several witnesses before this committee have been critical of the official conduct of a number of field personnel of your agency.

The committee is anxious to be completely fair to all concerned in our current hearings. Therefore, through this letter to you, we want to assure these field personnel that we will be glad to accept for our official record any statements they may wish to make pertinent to the testimony involved.¹

The regional offices at Winston-Salem, Seattle, Los Angeles, and Detroit have been mentioned in this connection.

Also mentioned were the following individuals:

Albert Schneider, identified as a field examiner from San Francisco, during the testimony of Lawrence B. Gilbert.

A Mr. McCormick, identified as a field agent from Winston-Salem, during the testimony of NLRB Chairman Herzog.

Howard Hilbun and Julius Draznin, identified as field examiners of the Seattle office, during the testimony of C. W. Radcliffe.

Bradford Wells, identified as a field examiner of the San Francisco region, during the testimony of Ross E. Thoreson and Clifton A. Rooker.

¹ The committee subsequently received communications from some of the parties named. Their letters are made a part of the printed record at the close of this day's testimony. See Contents, p. III for page number of each letter.

A Mr Scolnik, identified as an attorney from San Francisco, during the testimony of Lawrence B. Gilbert.

A Miss McElroy, identified as a field examiner from Chicago, during the testimony of Lawrence J. Reilly.

It is my understanding that the NLRB has obtained daily transcripts of the proceedings before our committee. However, additional copies of these transcripts will be available for examination at the committee office, should the Board's transcript not be readily available to you.

Our present plan is to conclude the current hearing on May 8. We will keep our record open through May 15. Should any of these field personnel wish to file a statement with the committee, they should forward it directly to John Q. Graham, the chief clerk. Any such statements should reach Mr. Graham not later than May 15.

Chairman McCONNELL. Now, on the basis of that, we have just received this huge volume about half an hour ago. In this, we have an introductory statement; a chart of case handling; memoranda on specific cases; a group of cases here; and then included statements submitted by regional offices located in Detroit, Los Angeles, Seattle, and Winston-Salem.

It is my thought that, where an individual's name has been mentioned in a derogatory manner or critical manner, that person should have a right to submit a statement, which will be received into the record.

Now, when it comes to memorandum on specific cases, and an effort in effect to try the case, you might say, before us, I believe that part should be received for reference purposes only.

Then I understand that you are going to make an introductory statement and discuss certain of these cases, and naturally that will be right in the record itself.

Also, I have a supplemental statement submitted here about 10 minutes ago for the record, the Committee on Education and Labor of the House of Representatives, by Paul M. Herzog, expressing his regret, of course, that he cannot be here. This statement also discusses certain matters dealing with the Taft-Hartley law, and, in part, how the Board has considered certain questions for clarification, and so on. It is our purpose to receive that into the record itself.

Mr. METCALF. At the time Mr. Denham, former Counsel for the Board, appeared before this committee, he alleged that the National Labor Relations Board "manhandled" the Labor-Management Relations Act of 1947: At that time I asked him for some specific cases which would sustain and document that charge. That was on February 27.

Since that time I have called him and members of my staff have called him, and Mr. Hussey, the minority clerk of the committee, has called him, to supply some of those cases. I had hoped that they would be supplied by this time so I could interrogate either the members of the Board or Mr. Bott, who is here representing the Board, on that basis.

To this date they have not been supplied, and I want the record to so show.

(The statement of Mr. Herzog follows:)

SUPPLEMENTAL STATEMENT OF THE NATIONAL LABOR RELATIONS BOARD BY
PAUL M. HERZOG, CHAIRMAN

I.

While deeply regretting that the Chairman cannot testify here in person, because the committee was unable to advance the Board's appearance to some day

earlier this week, I respectfully submit a further statement on behalf of the NLRB, in accordance with permission granted at the time of our first appearance here in February. The purpose of this statement, submitted primarily for the printed record, is to reply to the comments of several witnesses who have testified since that original appearance.¹ I am confident that in questioning my colleagues on other matters, of which we have not yet been advised in details, the committee will accord them the same unfailing courtesy that has been my lot since 1945.

We do not burden the record by replying to every isolated criticism, nor are we to be taken as conceding the correctness of any particular one to which we do not allude.² The Board concentrates, rather, upon a few points which appear to have been of greatest interest to witnesses, or to members of the committee, or to both. The fact that these points have been reiterated indeed requires that the Board engage, if not in self-defense, at least in self-scrutiny. The fact that these points themselves, however important and however much reiterated, are relatively few in number will, we hope, remind the committee that most of the Board's actions are accepted without serious question.

Most of the issues upon which the Board's decisions have evoked criticism are in areas where we would welcome clarification of the statute, one way or another. On some of these issues, we asked for clarification ourselves when the Board members appeared here 10 weeks ago. We then pointed out, in response to the committee's inquiries, how close and how fraught with emotion were many of the questions that the Board was compelled to answer when cases were presented to us.

Among the uncertain areas are several where employers or unions, perhaps dissatisfied with the Board's construction of the statute in cases they have lost, have attributed the Board's decisions to prior predilection and have urged that the statute must therefore be amended to give us clearer guidance. While denying the premise, we gladly join in the conclusion. The Board will welcome having more guidance, for there certainly is no advantage to 5 men in struggling with the interpretation of a new and complicated statute, calling 2500 decisions a year as we see them, only to have witnesses tell this committee that a mere handful of off-cited decisions, which could easily have gone either way, establish that the Board and its staff lack objectivity. That we have made mistakes, I do not doubt; that we should be criticized for them, I do not question. I ask only, in behalf of my colleagues, that in weighing the criticism this committee consider in each instance whether the critics are themselves altogether disinterested, and then appraise the Board's record as a whole on the basis of what its members have done in deciding over 10,000 cases since 1947.

II. SECONDARY BOYCOTTS

One subject that has stimulated considerable disagreement with Board decisions is that of boycotts. At the risk of repeating some observations made when we appeared here in February, I desire to remind the committee not only of the unique difficulties which this issue presents, but also of the Board's singular success in those Federal courts where our decisions have been tested. But the witnesses who dislike the Board's decisions do not dare criticize the courts who agreed with us, indeed, they often suppress the fact of that agreement, and then concentrate their fire upon the Board and its supposed attitude. Like my former colleague, James Reynolds—and with similar disinterestedness, now that the President has accepted my resignation as Chairman so graciously—I cannot help resenting this sort of attack upon my colleagues, who are too modest and too lacking in self-righteousness to answer back as they must often be tempted to do.

None of these boycott cases was easy for men who concededly are fallible, and few were decided by a unanimous Board. Yet several witnesses before this committee have suggested not only that the Board was fallible, but that its

¹ The Board is glad to report continued improvement in decision production during the intervening 2 months, bearing out our prophecy of February (See pp 188, 247, 294 of record of hearing.) In April we issued 45 unfair labor practice decisions. They took an average period of 103 days (including time to file exceptions) after intermediate report, as against the 220 days required at the beginning of the fiscal year. Representation cases now take less than 40 days from close of hearing.

² Nor does the Board reply here at all to those witnesses who have criticized occasional conduct of the Office of the General Counsel or of the regional offices which, under sec 3 (d) of the present statute, operate exclusively under his supervision. The General Counsel is fully capable of replying, as we are sure he will, to criticisms of this sort, and the Board members cannot presume to share this responsibility.

reasoning was, at best, fallacious. We sometimes wonder how these critics would have decided those cases had they sat where we sit, without enjoying their present advantage of finding the right answer so easy because it coincides with their particular interest. When one has no axe to grind, as we have none, the answers come harder.

A few examples of difficult threshold problems should suffice. How literally did Congress intend the Board to follow the provisions of section 8 (c)—which declares that the expression or dissemination of any views should not constitute or be evidence of any unfair labor practice—when it came to enforcing section 8 (b) (4) (A) against those secondary boycotts which were induced solely by unions' peaceful picketing? The unions contended that section 8 (c) must be read to render such conduct entirely lawful. We sought to apply the rule of reason, holding that Congress could not have meant to have prohibited such boycotts and yet have tied the Board's hands by denying us the means to prevent unions from making them effective. We therefore found violations, in the leading cases in 1949 and since, despite the "free speech" provision of the act,³ and have been subjected to criticism by many labor organizations ever since. It is interesting to note that none of those employer witnesses who assert that we have not applied the "free speech" section with sufficient vigor in other situations has protested its nonapplication in these particular decisions. Nor have those who contend that the Board has dealt too gently with certain other boycotts been generous enough to call attention to these decisions, or to point out how these particular cases, which went their way, could almost as reasonably have gone the other way.

Turning to a converse problem, how literally was the Board supposed to apply section 8 (b) (4) (A) against those pressures that were essentially primary, and not secondary, in character, where the act's words and its legislative history made the provisions susceptible of two quite different meanings? Here we held, reading the legislative history and balancing the conflicting policies involved, that Congress must have intended only to have the Board prevent those practices which were aimed directly at secondary employers. Picketing at the primary situs of a dispute has been held lawful, and not within the prohibitions of section 8 (b) (4) (A). The Board's assumption has been that Congress, which protected "concerted activities" by section 7 of the act, could not have intended to preclude traditional concerted action by a union at the place of business of the employer with which it had a dispute, merely because a secondary employer's employees might thereby be induced to stay away.⁴ A few employer witnesses suggest that this has weakened the statute, even implying that we have ignored a clear mandate rather than just made what we consider the more reasonable interpretation of uncertain language. Those witnesses have failed, however, even to mention how careful the Board has been to identify and condemn the secondary aspects of certain other special types of traditional boycotts which the unions, and at least one appellate court,⁵ would have had us view as primary and therefore lawful.

That Board action under section 8 (b) (4) (A) continues to be an effective weapon against true secondary boycotts is suggested by the fact that during the year preceding July 1, 1952, complaints arising under this section were upheld, in whole or in part, in 75 percent of the cases decided, as against 55 percent in the entire period between 1948 and 1952. That employers, like some labor unions, are not altogether satisfied with our action in this field is understandable, and it certainly is nothing new in this Board's experience. Someone has to lose every case before every tribunal.

The "ambulatory situs" cases, which are admittedly extremely difficult, provide an interesting example of this. Some employers in the trucking industry

³ *Wadsworth Building Company* (81 N. L. R. B. 802), *IBEW (Samuel Langer)* (82 N. L. R. B. 1029).

⁴ *Pure Oil Company* (84 N. L. R. B. 315, at 318); *Ryan Construction Company* (85 N. L. R. B. 417). Cf. *Western Express* (91 N. L. R. B. 340). In the *Ryan* case we said: "• • • Sec 8 (b) (4) (A) was not intended by Congress, as the legislative history makes abundantly clear, to curb primary picketing. It was intended only to outlaw certain secondary boycotts, whereby unions sought to enlarge the economic battleground beyond the premises of the primary employer. When picketing is wholly at the premises of the employer with whom the union is engaged in a labor dispute, it cannot be called secondary even though as is virtually always the case, an object of the picketing is to dissuade all persons from entering such premises for business reasons."

⁵ In *Denver Building Trades Council v. NLRB* (186 F. 2d 326 (C. A. D. C.)), the court disagreed with the Board's holding that certain boycotts in the construction industry were secondary and unlawful. On the Board's petition for certiorari (341 U. S. 675), the Supreme Court endorsed the Board's view and reversed the lower court. A recent witness for the building and construction unions, AFL, has criticized this Board decision as too strict.

have contended here that the Board has not gone far enough in certain cases in controlling boycotts where a primary employer's trucks (the situs of the dispute with that employer) have been picketed while unloading at a secondary employer's premises (*Schultz Refrigerated Services*, 87 NLRB 502; see also *Moore Drydock*, 92 NLRB 547). Yet witnesses for the principal union concerned with the trucking industry have recently suggested that we have gone too far in the other direction in other cases, by declining to hold picketing to be only primary when it continued at the secondary employer's premises after the trucks had departed (*Sterling Beverages*, 90 NLRB 401, and *Howland Dry Goods*, 85 NLRB 1037 and 97 NLRB 123).

We merely remind the committee again that, in this newly charted area of Federal regulation, the Board's construction of the act has been sustained by the courts, including several decisions of the Supreme Court of the United States. We have been upheld over the objection of unions and over that of employers.⁶ Although the law on these controversial issues therefore seems to us to have become firmly established, so that we see little urgent need for legislative assistance, it is apparent that some critics of Board decisions will continue to urge upon you that revisions are still necessary. If the Congress desires to amend the law, either because it disagrees with existing construction of the language which it wrote in 1947, or because it desires to expand or contract the regulation of secondary boycotts, the Board will gladly abide the event.

III. FREE SPEECH

Another example will disclose the nature of problems with which the Board has to deal. Here again we do not pretend always to have been right. But the nature of some witnesses' testimony is such that we are sure that the committee does not expect the Board members to sit silently by, while their objectivity is questioned by men who would never have questioned it at all if certain decisions had gone the other way. But, of course, if that had happened, some other witness, perhaps on the other side of the same case, might have been ready to assume that role.

Several witnesses have commented upon certain decisions of the Board involving section 8 (c) of the act, commonly known as the free-speech proviso. Because this is a most important section, and involves one of the areas where Board decisions have been seriously questioned before this committee, we wish to comment upon it.⁷

The constitutional guaranty of free speech, embodied in section 8 (c), does not, of course, itself prevent the Board from merely setting aside one election and running a second because of an employer's preelection utterances. The Board does not set elections aside as unfair just because of noncoercive expressions of opinion. However, a question arose in 1948 as to whether section 8 (c), which the amended statute itself had only made applicable to unfair labor practice cases, should be extended, by Board decision, to those representation cases where serious interference with an election was alleged. That section prevents the Board, in determining whether an unfair labor practice has been committed, from considering the circumstances under which expressions of views or opinions, not in themselves coercive, were made.

The Board was called upon in 1948 to decide anew whether the principles of decision in unfair labor practice cases must invariably control its evaluation of the fairness of elections. We held that they need not, although they normally would. The Board majority said, in the General Shoe case:⁸

"When we are asked to invalidate elections held under our auspices, our only consideration derives from the Act which calls for freedom of choice by employees as to a collective bargaining representative." Conduct that creates

⁶ *IBEW v. NLRB* (341 U. S. 694), *NLRB v. Denver Building Trades* (341 U. S. 675), *NLRB v. Service Trades (Howland Dry Goods)* (191 F. 2d 65, 199 F. 2d 709 (C. A. 2)); see also *NLRB v. International Rice Milling* (341 U. S. 665).

Similarly, the Board's leading decision on "hot cargo" agreements (*Conway's Express*) was upheld in the courts (195 F. 2d 906 (C. A. 2)). So was our holding in the *D. Gioiino* case that a union of agricultural laborers, not being a labor organization within the meaning of the act, could not be held liable under sec. 8 (b) (4).

⁷ In addition to employer witnesses who have criticized the decisions mentioned below, several union witnesses have asserted that the Board has impaired labor organizations' success by interpreting sec. 8 (c) too strictly, thereby giving employers license to interfere with their employees' choice of unions.

⁸ 77 N. L. R. B. 124, 127 (1948). There was a two-member dissent which gives the other side of the story. In this case, the employer had called individual employees to his office, one by one, to listen to his views against the union, and foremen had visited individuals at their homes.

an atmosphere which renders improbable a free choice will sometimes warrant invalidating an election, even though that conduct may not constitute and unfair labor practice. An election can serve its true purpose only if the surrounding conditions enable employees to register a free and untrammelled choice for or against a bargaining representative. * * *

"We do not subscribe to the view * * * that the criteria applied by the Board in a representation proceeding to determine whether certain alleged misconduct interfered with an election need necessarily be identical to those employed in testing whether an unfair labor practice was committed, although the result will ordinarily be the same. In election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees. It is our duty to establish those conditions; it is also our duty to determine whether they have been fulfilled. When, in the rare extreme case, the standard drops too low, because of our fault or that of others, the requisite laboratory conditions are not present and the experiment must be conducted over again."

In appraising the development of the General Shoe rule, which has been sparingly applied in practice, the committee should realize that the Board was reading the law literally, not departing from it. Nor were we, as some critics have suggested, inventing something new in 1948 in order to dilute the effect of section 8 (c). Many years before that, the Board had recognized that the test for determining whether an election had been fair was not always the same as that which applied in deciding whether someone had violated the law. Otherwise, of course, the Board could never have set aside elections because of union misconduct during the Wagner Act era, for at that time the law provided for no union unfair labor practices.

But if the Congress now believes that the distinction between the two types of cases should be eliminated, it has only to say so. This can be done by inserting language in the law which it omitted in 1947 and which your administrators have not inserted themselves. Our guess is that this would have a number of consequences. One would probably be to encourage an increase in attempts, by speeches and by declarations which fall just short of threats of coercion, to influence the results of Board elections. This might well operate to discourage the selection of collective bargaining representatives in some areas. It is for Congress, not this Board, to say whether extending the full effect of section 8 (c) to election cases is desirable under these probable circumstances.

We turn next to the Board's decisions on the right of a labor union to have an equal opportunity with employers to address assembled employees on company time and premises before an election. This is usually called the Bonwit Teller doctrine.⁹ The Bonwit rule, as enunciated in the leading case, adopted the distinction made by the Board of Appeals for the Second Circuit when it enforced the Board's Clark Brothers decision in 1947.¹⁰ The court had observed there that it would hesitate to preclude an employer from addressing his employees on company time and pay, "provided a similar opportunity to address them were accorded representatives of the union." The Bonwit case and others which followed involved situations where it was that similar opportunity which was not accorded.

To listen to some witnesses testify, however, one might easily get the impression that the Board went out of its way to devise some new method to set elections aside on the basis of employer speeches on their own time or property. In fact, the Board went no further in the original Bonwit case than to adopt the equality-of opportunity formula inherent in the second circuit's opinion. If Congress does not like that formula, it need only change it. Meanwhile the committee should at least remember that the same court did recently approve our application of that formula to the facts of that case,¹¹ and that the Supreme Court has denied review.

Although I happen to believe, as evidence by a number of dissenting opinions,¹² that my colleagues have gone somewhat too far in extending the Bonwit doc-

⁹ *Bonwit-Teller, Inc.* (90 N. L. R. B. 608 (1951)), with one member dissenting. This was affirmed, as modified, at 197 F. 2d 640 (C. A. 2); certiorari denied.

¹⁰ *NLRB v. Clark Bros.* (163 F. 2d 373, 376 (C. A. 2)). This 1947 court decision issued after the L. M. R. A., containing sec. 8 (c), had been passed and therefore after the legislative questioning the Board's earlier "captive audience" doctrine had been made, although a few weeks before the amendment actually became effective.

¹¹ Pointing out, to be sure, that there was a no-solicitation rule in effect at that store (197 F. 2d 640).

¹² *Foreman & Clark* (101 N. L. R. B. No. 153); *National Screw Co.* (101 N. L. R. B. No. 215); *Metropolitan Auto Parts* (unfair labor practice case, without a no-solicitation rule, 102 N. L. R. B. No. 171).

trine, I urge that you recognize its formulation and extension for what it is: the result of a conscientious appraisal by the Board of the meaning of the statute in the light of its history and of the existing facts of industrial life. This Board does not pretend to omniscience; the courts can reverse and the Congress can always overturn our construction of the law. But until that happens, the Members of the Board must continue to read the law as they honestly believe it to be written. I ask only that the committee recognize that that is exactly what has been done, and that Congress then give my colleagues further guidance if it will.

IV. INDEPENDENT UNIONS

Representatives of independent unions—in part through lack of data relating to other cases concurrently handled by the Board, and in part because of a misreading of the substance of particular Board decisions—have charged that the Board, assertedly for improper reasons, unduly delayed issuance of decisions in some of their cases, and in others consciously applied the law in a disparate manner to their disadvantage.

As to the charge of delay, the Board has already informed the Congress of its own constant desire to expedite its decisional processes. That any case was ever singled out for especially dilatory treatment because of the identity of the parties involved, we unqualifiedly deny. That such an accusation is unwarranted is disclosed by the very cases cited as proof of it. A careful analysis of the 3 cases mentioned in support of this criticism discloses that 2 were handled in the average time concurrently required for all other cases presenting the same substantive issues. In the remaining case, 35 days of the time consumed followed from the Board's granting requests of the complaining independent union itself for extra time within which to file briefs!

Turning to the accusations which seem directed partly to the Board's integrity, we can only extend to our accusers that understanding which they denied to us, and attribute their charge more to misunderstanding than to malice. That the Board may have erred in a decision, we do not doubt, because we have never pretended to infallibility. But that we consciously misapplied the law for any improper reason, we emphatically deny. Here again careful analysis of the cases mentioned as evidence of disparate treatment fails utterly to sustain the charges made. The Board will not presume voluntarily to burden the committee with a review of each case, but believes that at least one example should be recited to disclose the total absence of any basis for so serious a charge.

Thus, it is charged that the Board in two cases inconsistently applied its contract bar and its 1-year certification doctrines to favor affiliated unions as against independent unions. Cited are *Electric Auto-Lite Co.* cases (9-RC-1679 (Sept. 25, 1952) and 9-RC-1808 (March 5, 1953)), and *General Motors Corporation* (102 N. L. R. B. No. 115 (Feb. 6, 1953)). In each of these cases, the recognized union asserted an existing 5-year contract as a bar to a petition by a rival union seeking to establish itself as the bargaining representative of the employees. But as the facts in these cases made the issues different, the decisions were not inconsistent.

In the first *Electric Auto-Lite* matter, the Board found that the 5-year agreement in issue was a "premature extension" of an earlier contract originally made for a term of 2 years. The intervening petition was timely filed with respect to the original termination date. In the *General Motors* case, on the other hand, the contract in issue was initially executed for a 5-year term, and the challenging petition was filed in the middle of the term of that original and unamended agreement. We held that the latter agreement was a bar to a new election. Had the union in the first case been affiliated rather than independent, and had the union in the second been independent rather than affiliated, the result in each would have been exactly the same, for the basic principle of decision follows the facts and not the parties.

The Board's contract bar doctrine, under these circumstances, is simple and clear. A petition challenging the status of an incumbent representative, party to a contract with an employer covering the employees in issue, raises important basic principles under the act. In deciding whether a dismissal of the petition or direction of an election would best effectuate the policies of the act, the Board must weigh the interest in preserving the industrial stability established by the existing bargaining relationship against the statutory right of employees freely to select and change bargaining representatives. As long ago as 1945 the Board held that, absent unusual circumstances not here involved, a valid written agreement for a reasonable time would constitute a bar to a current election until

shortly before its terminal date; a limitation placed on the general doctrine as early as 1946, however, related to prematurely extended agreements. Thus, where an extension of the agreement is made after its execution, the Board will always find a petition filed early enough with respect to the original, and not the extended terminal date, adequate to warrant immediate conduct of an election. This has nothing to do with who holds the contract or who desires early balloting.

These are established doctrines indiscriminately applied in appropriate cases, regardless of the identity of the parties involved. These were the doctrines involved in the cited cases, and they were applied to the facts in those cases. Thus, in ordering an election in the first Electric Auto-Lite case, the Board did not pass upon the question whether that 5-year agreement was reasonable in that industry. Because the contract had been prematurely extended, that other issue did not arise. Therefore the decision could not have been inconsistent with that in the General Motors case.

In the second Electric Auto-Lite case, the petition involved employees who were not a part of the unit found appropriate in the earlier case, nor were they covered by any existing contract. Thus, it is not accurate to say that the Board disregarded the prohibition in section 9 (c) (3) against conducting more than one election within any 12-month period, nor is it true that we misapplied the contract bar doctrine. Neither issue was presented by that case. Here again, the Board applied established substantive principles to the facts of the case, not to the parties.

In short, these charges, upon factual analysis, disclose no disparate treatment by the Board. Rather, charitably construed, they disclose that those who levelled these charges either misunderstood the application of precedent to these cases or misread the Board's decisions. These weaknesses are symptomatic of those present in the other charges submitted by certain witnesses for independent unions.

V. LOCKOUTS

The committee has received considerable testimony, critical and favorable, regarding the Board decisions generally identified as the Morand and Davis Furniture cases.¹³ In both of these controversial cases the fact situation was as follows: Bargaining had been conducted upon a multiemployer basis, and historically had resulted in so-called master agreements. Following an impasse in bargaining, the union called a strike against only one of the employer members of the association. Thereupon, the other employer members of the association retaliated by a complete shutdown of their operations.¹⁴

Aside from factual issues relating only to the Morand case, the important question presented by the cases, and by witnesses before the committee, is whether a temporary lockout is a valid counter-economic measure available to employers to force capitulation to their terms after an impasse in bargaining negotiations. A majority of the Board held that it was not. They believed that resort to such measures—depriving employees of their livelihood because of their adamant bargaining position and to force them to recede—cut into the paramount statutory right of employees to bargain collectively and to engage in other concerted activity. They found that the scheme of the statute pointed to no other conclusion.

With that statutory interpretation, fairminded men may reasonably differ, as the Board's Chairman did in dissent. But understandable differences do not establish pro-labor sympathy on the part of the majority or pro-employer sentiment on the part of the dissenter. The most that fairly can be said is that the Board was called upon to make a hard decision. If the majority are wrong the courts before whom the cases are pending will tell them so, and the Board will gladly abide their verdict.

VI. STATE REGULATION

Finally, the record would not be complete without further comment on H. R. 3055, about which Congressman Lucas made some inquiries when we appeared in February.¹⁵ Since then, the Board has had fuller opportunity to

¹³ *Morand Brothers Beverage Co. et al* (91 N. L. R. B. 409), enforced in part and remanded in part (190 F. 2d 476 (C. A. 7), 99 N. L. R. B. No. 55 (decision and order on remand)), *Albert Leonard, Arnold Davis, et al. d/h/a Davis Furniture* (94 N. L. R. B. 279), remanded in 197 F. 2d 435 (C. A. 9), 100 N. L. R. B. No. 158 (decision and order on remand).

¹⁴ Involved are factual disputes as to whether in Morand the shutdown was accomplished by discharge of all employees, rather than by a temporary lockout.

¹⁵ Record of hearings, pp. 226-227.

analyze some problems created by this bill and by S. 1161, about which we have just testified in the Senate. As the committee will recall from our testimony-in-chief (record of hearings, pp. 189-190), this Board is not hungry for jurisdiction. We favor legislation (such as S. 1264) which would make it easier for the NLRB to cede jurisdiction over essentially local enterprises to State labor boards. But we believe that H. R. 3055 is a very different sort of thing, creating potential complications which should at least be called to the attention of the committee. Strangely enough, some of its principal advocates are among those who most strongly urged the expansion of Federal power over union conduct—especially through section 8 (b) (1) (A)—in 1947.

H. R. 3055 has evidently been introduced and sponsored primarily to preserve, or as some view it, to restore, the traditional power of the States to prevent violence and other threats to the peace.¹⁶ We believe that the Taft-Hartley Act, as interpreted by the Supreme Court of the United States and by this Board, does not today inhibit the States from exercising that fundamental power. Each sovereign State may today, just as it has always been able to do, deal with violence wherever it is found, whether on the picket line or elsewhere.

The Supreme Court has emphasized this principle and recognized its continuing validity since the present Federal act went into effect in 1947. Approving certain action of the State of Wisconsin and rejecting the contention that the Federal statute superseded State authority, the Supreme Court said, in 1949: ¹⁷

"While the Federal Board is empowered to forbid a strike, when and because its purpose is one that the Federal act made illegal, it has been given no power to forbid one because its method is illegal—even if the illegality were to consist of actual or threatened violence to persons or destruction of property. Policing of such conduct is left wholly to the States."

This is the law; no other decision of the Supreme Court, or indeed of this Board, has cast any doubt upon it. The cases in which the Supreme Court has declared the Federal law to be supreme have not involved any kind of violent action. Nor has this Board held that the States have entered its own exclusive field of operations when they have dealt with the violent or unpeaceful aspects of strike activity. If some nevertheless believe it desirable for the Congress just to underscore this particular principle by express enactment, we suggest that it could be done in more circumscribed and more specific terms than appear in H. R. 3055.

H. R. 3055 goes far beyond the realm of violence. It would set up a dual system of regulation—Federal and State—over all strikes and picketing, without regard to their peaceful nature and to the interstate character of the business affected. It would permit each one of the 48 States to reach into the peaceful disputes of the largest interstate enterprises within its boundaries, in the same way that it could deal with violence or with controversies in purely local businesses. At the same time, the Federal Government would be required to trim its own national law and policy, so as not to nullify the new State authority. Authorizing State boards to regulate union and employer conduct in local enterprises, where no regulation may exist, is entirely different from granting a license to the States to regulate, and perhaps to be supreme, in those very areas affecting interstate commerce which Congress has so far found to be within the Federal sphere.¹⁸

Of course, the Congress may desire also to free the States more to handle certain special problems. If, for instance, it desires to authorize them to deal with strikes which deprive a community of essential services, as in public utilities, that could be accomplished by limited and specific language. We suggest that this should be done without depriving the NLRB of jurisdiction to continue to handle other aspects of the labor relations of those utilities which are essential to interstate commerce.¹⁹

¹⁶ See statement of Congressman Lucas made on March 19, 1953 (Cong. Rec. A 1249).

¹⁷ *UAW (AFL) v. Wisconsin Employment Relations Board* (336 U. S. 245, 253). A convenient compilation of the cases on this general subject appears in the recent staff report of a subcommittee of the Senate Committee on Labor and Public Welfare, entitled "State Labor Injunctions and Federal Law" (82d Cong., 2d sess.).

¹⁸ See the 1947 observations of Congressman Case on the need for a national policy in these matters, at 93 Congressional Record 3559.

¹⁹ For this reason we have reservations about the breadth of the exclusion suggested by S. 1785. That bill, introduced by Senator Smith after we had prepared our testimony for the Senate committee, would appear to oust the NLRB of all power to handle unfair labor practice or election cases in those major public utilities whose situs may happen to be in only one State, although their facilities may be essential to large interstate industrial plants.

But whether the objective of the supporters of H. R. 3055 be broad or be narrow, the difficulties certain to confront the National Board as a coregulator with the States must be anticipated and placed before you. The National Labor Relations Board would be required to construe the national act so as not to "nullify" state power "to regulate or qualify the right of employees to strike or picket." Does this mean that the federally guaranteed right of employees to engage in peaceful concerted activity must yield to the laws of the particular State within whose boundaries a dispute has occurred? Put another way, is section 7 of the Federal act, which is the heart of the national policy on freedom of association, to be interpreted and thereby amended 48 different ways in the light of 48 possible different sets of laws? Is the National Labor Relations Board, then, to decide in appropriate cases before it that what constitutes protected concerted activity under section 7 of the Federal act for employees in New York State may not be so for employees in Virginia?

These are very practical real problems, and are likely to raise difficult constitutional questions. They become apparent when some of the present State laws are examined. Several States require a prestrike majority authorization vote; the Federal act calls for no such official sanction. Is the NLRB to be required to rule that employees of a national concern who engage in a strike in State X, peaceful and lawful under the Federal act but called in contravention of State X's own law, are to be denied the protection of Federal section 7, although they could have enjoyed that protection if they had happened to work in State Y? The same dilemma would follow from State provisions for cooling-off periods or from compulsory arbitration. To what extent does Congress want to abdicate its own power—not this Board's power—to make uniform regulations for handling labor disputes in national industries?

If the bill intends to give the States and the Federal Government concurrent authority to act in the same labor dispute, each to be master in its own sovereign area, what of the possibilities of a head-on collision of conflicting sanctions? To say that both may act is, we believe with the Supreme Court, unrealistic because:

"The second to act either must follow the first, which would make its action useless and vain, or depart from it, which would produce a mischievous conflict."²⁰

We ask these questions only in order to emphasize that the most fundamental policy issues are raised by H. R. 3055. Their resolution is, of course, beyond the province of your trustees on this Board. Perhaps it should at least await a survey by the Commission which the President is designating to study Federal-State relationships.

VII

If 8 years as Chairman of the National Labor Relations Board have taught me anything, they have taught the wisdom of patience and the folly of seeking sure solutions for the major problems of labor relations. They have taught, also, that once men become reconciled to something less than perfection, progress is certain to be made. It has been made during the past 20 trying years in America, made infinitely faster than anyone would have dreamed a generation ago. It will continue to be made, by industry and labor and the people's representatives, if men of good will refuse to surrender to those who stand to gain by stimulating controversy.

Differences there will always be so long as democracy survives, for only so long can both employers and employed freely seek a larger share of the fruits of industry, or a fuller voice in the counsels of the community. All that Government can do, and that it certainly should do, is to channelize those differences and alleviate their more distracting or more devastating consequences. But it can never eliminate them completely, if democracy and free enterprise are to continue to march forward hand-in-hand. What ever the momentary irritations of today, American management and American labor surely do not want to live together under that sort of government-imposed peace. For that would be the peace of totalitarianism, the peace of the grave.

Chairman McCONNELL. Now, I do not care how you proceed, but I think it probably would be advisable to have some member of the Board sitting with you, and also you as General Counsel, and Mr. William R. Ringer here. He is here; he should also be there with you.

²⁰ *Bethlehem Steel Co v N. Y. State Labor Relations Board* (330 U S 767, 776 (1947)).

I would say that you proceed with your statements as you see fit, after which the committee would like to ask questions in regard to several specific matters, and we will proceed from there.

STATEMENTS OF GEORGE J. BOTT, GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD, ACCOMPANIED BY SAMUEL V. MERRICK, SPECIAL ASSISTANT TO THE GENERAL COUNSEL; PAUL L. STYLES, ACTING CHAIRMAN, NATIONAL LABOR RELATIONS BOARD, ACCOMPANIED BY WILLIAM R. CONSEDINE, ACTING SOLICITOR; AND WILLIAM R. RINGER, CHIEF TRIAL EXAMINER, NATIONAL LABOR RELATIONS BOARD, ACCOMPANIED BY GEORGE BOKAT, ASSOCIATE CHIEF TRIAL EXAMINER

Mr. BOTT. Chairman McConnell, I gladly take the legal and official and the moral responsibility for the actions of the people who have been mentioned during this hearing; also for the handling of those cases.

Physically, it is an enormous job for me to give our side of the story after 12 weeks of hearings; so we did prepare this document which you received this morning, which is not so overwhelming as it might first appear. It contains my introductory statement, which I will read. It takes a chart of case handling,¹ which I know the committee is interested in—how a case flows through a regional office.

The memorandum on specific cases are not for the purpose of retrying a Labor Board case. The committee cannot do that, and I do not think intended to try the cases. However, when those cases were being described to the committee, our conduct and our procedures were attacked by some of the witnesses. I only offered our side of the story so that, from the case-handling point of view, and not from the merits, the committee would see that in some cases—I think in all cases, but at least in some cases—there are two sides to the story.

Now, the statements are submitted by the regional offices because the regional office as a whole, as an entity, was attacked, despite the individual criticism of a particular field examiner.

That field examiner is under the regional director, and an attack on him is an attack on the regional office, and the regional offices felt they would like to say something. I might say that the regional directors wanted to be here today; and it was first contemplated, I understand, that we might be able to call some of them back, but because of the time element the committee did not see fit to do that. However, they would like to be here, and I am representing them today.

I am appearing in my personal capacity as representing myself, and I am representing the National Labor Relations Board and the General Counsel's Office; I am representing the agency, and I am representing the employees of my office, and I hope I can do a good job in representing them.

As I said in my opening statement, morally and legally I am responsible, but physically it is almost impossible for one man in this short time to cover substantially half of the cases which have been mentioned in this proceeding. I accept your ruling that the cases may become part of the committee's record for reference pur-

¹ Not printed.

poses, but a lot of time was spent on those cases here before this committee, and I would like the privilege of asking you at least, as a lawyer, to reconsider your ruling and permit me to offer our side of the story.

We have been criticized before this committee by witnesses who said that we did not listen to their side of the story when we investigated the case, and that we issued complaints without hearing their side of the story.

Sir, I do not believe that this committee will pass judgment on us without hearing our side of the story, at least the best we are able to bring to you today.

I respectfully and humbly ask for reconsideration, sir.

Chairman McCONNELL. Mr. Bott, you can discuss whatever cases you see fit, and I think that you will find that you will be asked questions about a great many of the cases before the day is finished. We will see if that will not suffice, rather than putting this whole volume into the record. We have it available for reference purposes, and it can be examined whenever a criticism is made regarding a case when we are considering any of the matters involved. This is quite a volume to place in our record at the present time.

Mr. BOTT. I understand your ruling and I accept it, of course. We thought that this would save time, really, because some of the cases are quite long and involved, and my description of them which I will try to make might be somewhat more lengthy than my general referral to them and then having the committee read it if it saw fit.

Chairman McCONNELL. I think that you will find you will be discussing many of these cases regardless of whether they are actually received in the record or as reference. I think you will find by the time the day is finished that there will be quite a bit of repetition of what is actually in here.

Will you proceed, Mr. Bott?

Mr. BOTT. As you indicated, Congressman McConnell, we accepted your kind invitation. The individuals who were mentioned will send letters to the clerk of the committee.

Chairman McCONNELL. They will be received into the record and we are very pleased to have them.

Mr. BOTT. Thank you very much.

COMMITTEE NOTE.—(The communications subsequently received in connection with the foregoing remarks are made a part of this record at the close of today's testimony. Page numbers of individual letters are listed in the Contents on p. III.)

Mr. BOTT. I am grateful for the opportunity this committee has extended to me to answer some of the criticisms which have been made of some of our case handling by various of the witnesses who have appeared here during the past weeks.

It is not surprising, of course, that an agency charged by Congress with the responsibility for issuing and prosecuting complaints against both employers and labor unions when their conduct exceeds legislative limitations should be the target of criticism by parties against whom decisions are eventually rendered. The nature of the task forbids the hope that both employers and unions will also be pleased with the job we to.

The Supreme Court once observed that public criticism of legal decisions is a "practice familiar in the long history of Anglo-American

litigation, whereby unsuccessful litigants and lawyers give vent to their disappointment." However, it is probably also true that whoever listens to a disappointed litigant is not likely to get a full and unbiased report. The facts which I shall relate will, I hope, place the applicable criticisms in an appropriate context for evaluation.

Some of the criticisms which have been made are directed to the personal conduct of particular employees under my supervision in the performance of their duties. Other criticisms have been voiced against decisions made by the regional offices in the handling of specific cases.

At the outset I should like to make brief reference to the day-to-day process of developing the substantive provisions of the act. I cannot hope in the short time I have here today to describe all the interpretative decisions I have made which are grounded on complicated and detailed statutory provisions, and which involve the balancing of the most delicate considerations. The task would be vast. However, I have in my office complete studies on several aspects of the statute, such as secondary boycotts, non-communist affidavits, and the like. These analyses are available should you request them.

I might say, interpolating there, that in the years since I have been General Counsel I have issued over 900 rulings on appeal from dismissals of cases in the regional offices. Those rulings are public documents, and we have given them to the press and to the labor services over the past few years. I do not recall one of those cases being mentioned in these hearings. Those are my rulings in the statutory Office of General Counsel on appeals from decisions in the regional offices by parties who thought they did not get their rights.

Insofar as complaints have been directed to the personal conduct of employees under my supervision, I have asked those involved, as we have discussed previously, to write directly to the committee to present the facts of the matters in which they have been implicated. This is in accordance with the invitation so kindly extended by Mr. McConnell in his letter of April 30, 1953. Mr. McConnell also indicated, so I thought, that he would welcome material from our regional offices located in Detroit, Los Angeles, Seattle, and Winston-Salem, since these offices were involved in some criticism. This material is attached.

Chairman McCONNELL. We are receiving the statements from the regional offices. I did not want you to misunderstand that. Regional offices located in Detroit, Los Angeles, Seattle, and Winston-Salem have been criticized individually and we will be glad to receive their statements into the record.

Mr. BORR. Thank you, sir. I would also like to describe briefly the methods I have utilized in supervising the working habits of personnel in the regional offices. I am fully aware of the importance, in so dynamic a field as labor-management relations, of the personal qualities of tact, objectivity, politeness, helpfulness, and devotion to duty in our field employees. I speak from my own experience of many years in regional offices of the Board, where it was always apparent that success in instilling respect for the Board's processes, yes, of Government's processes, and in obtaining amicable settlements to avoid disputes, lay in the skill, patience, and understanding of the individual field office employee.

To maintain high standards of service in the regional offices, I have assigned three Assistant General Counsels to police their work performance. These men travel through the regions and inspect the regional offices' handling of cases. I might say parenthetically that these three Assistant General Counsels who inspect field offices and report to me were all appointed to their jobs by my predecessor, Mr. Denham.

These Assistant General Counsels make regular visits to the regions under their jurisdiction for the purpose of familiarizing themselves with local problems, including those of personnel. Special efforts are exerted to make continuous improvement in the quality of field work and in maintaining good relations with the public. Any serious complaints against particular employees are brought to the attention of my office in Washington, and appropriate steps are taken to deal with them. As a result of this process we have asked, in the 5½ years since the Taft-Hartley Act was passed, approximately 20 regional office employees to leave the agency. Such action, however, occurs only in isolated cases.

I might refer to the document which is now on file for reference by the committee, "E" in the contents, "Sample Instructions to Regional Offices,"¹ which contain some of what we call our management improvement literature, how we try to improve our proceedings, and instructions—typical instructions—to people about how to conduct themselves, and how to handle cases. We also have a field manual which I would not even dare suggest to the committee that it be read, which contains about 1,000 pages of how to handle cases. It is a bible for the people in the regional offices. Some of the other agencies have those, as you know, but many of them do not. We have developed that over the past 5 years.

MR. SMITH. On page 3 you say "any serious complaints against particular employees were brought to the attention of my office in Washington and appropriate steps are taken to deal with them." How many have been fired?

MR. BORR. We say in the next sentence in 5 years—and I testified to this earlier in February—that we can remember and find records of at least 20 people who were asked to quit.

MR. SMITH. Have you got their names?

MR. BORR. I do not have them; I think I could get them. I can ask immediately that we be permitted to give them to you in executive session—not in executive session, but for your own use because some individuals, there is nothing wrong with the man, but he just did not have the poise or tact or understanding of a labor case. We said: "We would like to have your resignation," or "Why don't you get another job?"

There are other cases in which the cause was personal misconduct, drunkenness, or failure to show up on the job, or something like that. But when cases do come up like that, immediate action is taken if the conduct is serious.

I will say again, Congressman Smith, in passing, that many of the criticisms which were made about us never even came to the attention of the regional director of the office, let alone my office or my associate's office in charge of field operations. I recall two or three of those in

¹ Not printed

California where they never went in and talked to the boss, the regional director in the office, and told him "We think your man is not doing a job."

This is the first time we have heard of many of the criticisms and I should think it goes without saying that our door is always open to the public if they have criticisms.

As a regional director in Chicago, people did come in to me as regional director, unions and employers, and say "Will you take a look at this case yourself?" Those of us in the public service, and I think you in Congress, know that that is the way the office operates on a daily basis.

If a person thinks they have a grievance and they are not getting a fair deal or a fair shake, they go to the boss, and many of these criticisms have never come to our attention. It was the first time we knew of them when we read them in this transcript and I read the transcript myself and it was a very disheartening experience.

Mr. SMITH. Have you let anybody go for failure to use due objectivity in handling of these cases?

Mr. BORT. I think so, I would say that we have. I will go out on that limb—I am sure when we talk to an individual in the early stages when he is learning the job, when he does not grasp the problems or he feels biased on one side or the other and he cannot see labor relations, we ask him to get another job.

Mr. SMITH. You would not tell us that you have not had many complaints over the past few years for this lack of objectivity and approach to this subject, would you?

Mr. BORT. No, sir; we get complaints all of the time.

Mr. SMITH. That is all.

Mr. BORT. Everybody wants to kill the umpire.

I am confident the overall performance of these employees is excellent and that their attitudes are beyond reproach. They are carefully screened before being hired, and are given full preparation before being assigned to cases in which their conduct will reflect on the agency. There is no method of which I am aware which furnishes a foolproof guarantee of top performance in every situation, but I have found that a constant exertion of the efforts to which I have referred produces good results in the long run. I am introducing for the record some of the instructions issued to the regional offices.¹ These convey our high standard of service.

At that point I recall two criticisms of us in the transcript. They were subtle criticisms and they said: "The Labor Board had two lawyers on that case." Now, I have been reading material like this for many years, and I know why that remark was put in there. Here is the big Federal Government coming into our small community with two lawyers. It so happened in both of those cases the respondent had two lawyers too, but that is his right and his privilege. But in both of those cases we had another lawyer on the case to train him. He was a brand new man, and he sat there and listened to the more experienced lawyer try the case.

So I say here that we train these people so that their conduct will be exemplary, but when we train them we are criticized, I say subtly, for wasting the Government's money.

¹ Not printed

There is one other point which I wish to make clear at this time. The several cases which have been singled out for complaint to this committee can no more reflect an accurate picture of the entire work record of the General Counsel's office than the handling of one or two controversial bills can reflect the full record of a session of Congress. Before a fair judgment of the performance of the General Counsel's office can be arrived at, there must be an appreciation of the volume of cases handled by us, the proportion of them which are settled amicably, and the comparative number of contested cases which provoke no criticism of the manner in which we have handled the proceedings. Indeed, these considerations are prerequisite to a fair evaluation of the particular cases which have been singled out for criticism.

Some figures I have collected will illustrate what I have in mind. Now, you have heard a lot of statistics I know from us in the past and we gave the Senate a lot, and we use it before the Budget Bureau and Appropriations Committee. But our work is statistics unfortunately because of the thousands of cases we handle. I do not know how we can defend ourselves against a general charge of bias and prejudice.

Someone said, and I think a good speaker and a great man, that the spectacle of men working patiently and quietly is not newsworthy. So we have to defend ourselves sometimes with these cold, dry, dull, uninteresting and boring statistics. That is because we handle so many thousands of cases.

Thus, during the period since the Taft-Hartley Act became law in 1947, and until March 31 of this year, approximately 130,000 cases were filed in our regional offices. I want to interpolate again and say that it is a safe bet that out of those 130,000 cases there must have been 75,000 people we dealt with in 5 years. That is, 75,000 people who would go away either liking us or disliking us. I say it is a safe bet.

About 30,000 of these were cases where either an employer or a labor organization was charged with the commission of an unfair labor practice, and the remainder were cases in which we were asked to conduct an election. Let us use real language; these people were charged with a violation of the laws of the United States. Now, I did not expect them to like it.

Perhaps you have observed that most of the criticisms voiced before this committee relate to unfair labor practice cases and not election proceedings. The paucity of criticism in our treatment of election cases, viewed in the light of the thousands of such cases handled each year, is suggestive, I think, of the efficiency and objectivity with which the staff carries out this responsibility.

Now, I recall in the transcript one of the witnesses said: "Well, let the Labor Board handle the election cases and take the unfair labor practice cases away from them." It is the same people. Can we be fair in an election case and not fair in an unfair labor practice case? Is it not the emotion involved in these unfair labor cases, and is it not perhaps the economic stakes involved in them—whether you are going to have a union or not, or whether the union has to take off the picket line—which are responsible for some of our criticisms, I do not and will not say that all of it is this, or all of it is that, but I am confident—I am morally certain—that the economic stakes involved in labor relations are responsible for some of the criticism of the people

who are trying to evaluate and rule on the rights and obligations of the citizens involved.

Consider in this election field, the exceedingly difficult and explosive representation problems that were created throughout the electrical manufacturing industry a few years ago, when the CIO expelled the UE from its membership and chartered the IUE. The same situations also arose when the CIO threw out the furniture workers, and the mine, mill, and smelter workers, and the food and tobacco workers, and district 65 in New York, and a lot of other unions I cannot remember. This caused a schism, as we say in labor parlance, where nobody knew who the bargaining representative was in that big plant. The employer was there without knowing who he should deal with; both parties threatening to strike; suing each other, and all kinds of lawsuits. There were petitions and elections, particularly throughout the electrical industry. They were handled well, and they were handled expeditiously without any serious strikes, and new bargaining representatives were set up.

Now, it would be very easy for me to secure commendatory statements from both union officials and employers—I will say particularly in the electrical field—about the job we did and they would testify to the evenhanded treatment they have received. I do not believe, however, that you have invited me here today to recite the testimonials of satisfied customers. But I do think our good reputation deserves emphasis especially in the context of criticism made by the few dissatisfied customers.

To further appreciate the perspective in which the criticism of the handling of particular cases must be viewed, I want to point out the very small area of our operations upon which they reflect.

Now, this story has been given before to committees, and we tell the Budget Bureau and our Appropriations Committee about it and we tell the public, but I do not think it is understood and appreciated. At the risk of boring you, I want to say it again: When an unfair labor practice charge is filed, our first effort is to investigate the case in order to determine whether the facts alleged have substance. Some 65 percent of the cases are disposed of for lack of merit by dismissal or withdrawal.

Now, you have been told that you cannot ever win a case before the Labor Board; that if you go to the Labor Board, you are licked. Sixty-five percent of the cases filed before us are dismissed by our regional office people after we investigate them. We discuss them or get them withdrawn, which is the same thing in practical effect. Those which appear to have merit are usually settled by agreement between the parties.

Over the years, an average of nearly 90 percent of the charges filed with us are closed before formal action. An additional 3 or 4 percent are settled after the complaint is issued but before hearing. A very considerable portion therefore, of our operations, consists of procuring informal adjustments of labor disputes, an area of work in which no serious criticism of case handling has been raised in these hearings. A somewhat similar showing may be made in representation proceedings.

Before proceeding to a factual account of particular cases, I want to call your attention to a chart, attached hereto, prepared to familiarize you with certain stages through which cases are processed, and

the particular organizational units of the agency responsible. This explains the representation cases, namely unfair labor practice cases, about which there has been some confusion.

It shows how they flow up through the agency. I do not know whether you can read it; if you are as nearsighted as I am, it does not mean a thing to you right there.

Now, I have 3 or 4 cases, and if I am here long enough we probably will go through 20 of them.

I said I will take the responsibility, but besides handling the General Counsel's office down the street there, and a few secondary boycotts day after day, it has not been an easy job physically to get this stuff together. But I will say I am as prepared now as I ever will be and I would like to repeat one last word, that the regional directors would have liked to have been here. In fact, some of them insisted that they come.

I told them that I would represent them, and I am appearing here today as General Counsel of the National Labor Relations Board, and I am also going to try to represent them.

I want to say whether I perform the function of General Counsel or whether I occupy that office, is of small or no moment to the country. Whether I occupy the office of General Counsel, or whether those regional directors or whether the Board members occupy those offices, and they can speak for themselves, and I am speaking for myself, is perhaps of little moment to me. But my reputation, as an administrator of the Taft-Hartley Act, is very important to me.

I have done a job; the Taft-Hartley Act has been in good hands. I am a lawyer and I know the meaning of an oath, and I know about the constitutional separations of the legislative and the judicial and the executive. The law was given to me by Congress and I accepted the responsibility and I administered it.

When I was before the Senate committee for confirmation, or for recommendation by the committee for confirmation, Senator Taft asked me only about two questions. He said:

Mr. Bott, will you take the law as it is given to you and administer it, and leave any amendments of it up to us?

And I said: "Senator, there will be no question about that," and there hasn't been any question in my mind.

I can read the law, and I am a trained lawyer, and I have been in this field a long time, and I know the background of the Taft-Hartley law. I know generally what I think Congress' intention was and it is not always easy to determine it. I have tried to administer the law fairly and honestly. That is what I want my reputation to be.

Now, the hearings have gone for 12 weeks and the testimony is in. We have not seen the witness; we have not cross-examined them, of course, and we have not told our story yet. The jury may be out, and will be out shortly, but I hope the verdict is not in, but perhaps in the minds of some of the members of the committee—I don't know, I am only a human being and I am not clairvoyant—the verdict may be in.

But before discussion or the passing of sentence, I hope that you will consider our side of the story and in this last note I would like to refer the committee to the preamble to the Taft-Hartley law. There it says in section 1 (a), that—

industrial strife which interferes with the normal course of commerce and with the full production of articles and commodities for commerce can be avoided, or substantially minimized—

and I won't read it all—

if employers, employees, and labor organizations each recognized under law one another's legitimate rights in their relations with each other—

and above all, that they recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardizes the public health, safety, or interest. The last few words in the second paragraph provide, also, that the purpose and policy of the act is to protect "the rights of individual employees in their relations with labor organizations, whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare." And the findings and policies of the Congress, which I am sure the Congressmen all know very well, are that "the denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes."

Going on to the fourth paragraph:

Experience has demonstrated that certain practices by labor organizations and their officers and members have the intent or the necessary effect of burdening commerce.

It is then—

declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

This is our bible, and this is the law that Congress wrote. We are trying to enforce, as I said the first day I was here, the whole law and the whole law applies against employers as well as against employees.

We have to have people who understand the rights of the employers and the rights of the labor unions and the rights of members of the unions. We cannot have people who are against collective bargaining, and we certainly do not want people who are against employers. We cannot have people who are against private ownership of the means of production. We have to have someone who is in the middle.

If our men have been enforcing the law against employers, too, it is because Congress told us to do it. If Congress does not want us to do it, Congress will have to amend the preamble to the act as well as the act.

Thank you, Congressman McConnell.

Chairman McCONNELL. Does that finish your statement?

Mr. BOTT. That finishes my few preliminary remarks, sir. I have the cases that I would like to talk about. I would like to go into the cases at your pleasure. I could do it now and get it over with.

Chairman McCONNELL. You may go into it.

Mr. BOTT. I think I will start with the oldest case that was mentioned before this committee, the Juneau Spruce case.

On March 20, 1953, Mr. Card, personnel manager of Coos Bay Lumber Co., testified before the committee in favor of, among other things, an amendment to section 10 (1).

The case which Mr. Card mentioned in his statement as illustrating a need for his proposed amendment to section 10 (1), the Juneau Spruce case, it should be noted, arose out of a situation which developed shortly after the 1947 amendments to the act.

At the time there were no precedents for the interpretation of the jurisdictional disputes sections of the act; those are sections 8 (b) (4) (D) and 10 (k). Moreover, as noted by Mr. Card, a serious question then existed as to whether section 10 (1), which conferred jurisdiction to grant injunctive relief only—

Mr. McCABE. Where are you? What page are you on?

Mr. BOTT. I am sorry, we have an index, but not a tab system on these cases. It is about one-third of the way down. I think the case name is on the bottom of the pages, that is the only help I can give you, and by thumbing it you might find "Juneau Spruce."

As I say on page 2 of that document, the dispute in this case involved who should load the lumber of Juneau Spruce Corp., an Alaska lumber company, aboard the latter's barge for shipment to the States. The longshoremen's union claimed the dock-loading work but the company assigned the work to its regular mill employees, the inside workers, who were represented by the woodworkers union.

The longshoremen then picketed the Juneau Spruce plant, that is the dockworkers, the ILWU, I guess. They picketed the plant. The woodworkers members employed by the company refused to cross the picket line and refused to claim jurisdiction over the dockwork which the longshoremen contended was theirs.

The longshoremen were striking to secure the assignment of work to its members which the company had assigned to the woodworkers members but which the woodworkers union refused to claim within its jurisdiction. In other words, it was assigned to them but they refused to accept it. In other words, there was no dispute between the longshoremen and the woodworkers concerning who was entitled to the work, but both agreed that it belonged to the longshoremen.

That was the situation on April 10, 1948, when the first charge was filed with the Seattle regional office.

Now, this is long before my time, before I became General Counsel, but I agree with everything that was done here and I think it was the only way to handle the case.

As stated by Mr. Card, that charge was promptly investigated, and he admitted that it was dismissed by the regional director in belief that the longshoremen's strike did not violate the jurisdictional disputes section of the law. The conclusion that there was no violation was predicated on the assumption that since the woodworkers, the inside union, acquiesced in the longshoremen's claim of jurisdiction over the dockwork, there was no dispute between the two unions regarding who was entitled to the work. There was no jurisdictional dispute within the meaning of the act.

The regional director's office dismissal on appeal was sustained by the then General Counsel, Mr. Denham. At that time, it seems, it was assumed that section 8 (b) (4) (D) read in conjunction with section 10 (k), prohibited strike actions to force the assignment of work

to one group rather than another group only if both groups claimed the work.

Meanwhile, in July of 1948, while the appeal from the Director's dismissal was pending before Mr. Denham, the woodworkers returned to work, notwithstanding the picket line of the longshoremen and they claimed jurisdiction over the dockwork then.

On August 3, 1948, the day before Mr. Denham dismissed the charges in the first case, the Juneau Spruce Co. filed additional charges predicated on the changed circumstances. These new charges were again promptly investigated and a notice of hearing as required by section 10 (k), to determine whether the longshoremen were entitled to strike to secure the disputed work, was issued on the new circumstances. This hearing was held at Juneau on September 21 through September 24, 1948.

In October of 1948, after the conclusion of that 10 (k) hearing, which is something like a representation hearing set up by the statute, the Juneau Spruce Co. requested the General Counsel to seek an injunction against the longshoremen under section 10 (l). The record made at this 10 (k) hearing was examined and it was learned that the longshoremen, the ILWU, had interposed a number of defenses to support its claim that it was entitled to strike to get the dockwork.

Among these were:

1. The contention that its certification as the bargaining representative of the Pacific Coast Waterfront and Shipowners Associations covered the Juneau Spruce work.
2. They also asserted that Juneau Spruce was obligated under the contracts between Juneau Spruce's predecessor—a successorship problem—and the longshoremen to assign the dockwork to members of the longshoremen's union.
3. They argued that the claimed work was traditionally longshoremen's work and not millhand's work.

I recall at that time, in trying to determine what we would do in these jurisdictional dispute hearings, we had no idea whether or not we would go into the evidence of the background of the traditions in the industry to see who was entitled to the work under labor standards. At this time the General Counsel had no knowledge of how the Board would deal with defenses of this nature.

The Board's first 10 (k) jurisdictional dispute determination did not come down until March of 1949. Moreover, at this time it was doubted that the Alaska district court had jurisdiction to entertain an application for injunctive relief under section 10 (l). The legal point there is the question of whether the courts of Alaska are the courts of the United States, as described in the Judicial Code. For these reasons, Mr. Denham decided that an application for 10 (l) injunctive relief at that time was inappropriate.

The Board's 10 (k) determination in this case, at this time the second one issued by the Board, came down on April 1, 1949. At about the same time the Alaska district court decided in the civil action for damages brought by Juneau Spruce against the longshoremen, that under section 303 it had jurisdiction under the act.

When the doubt as to the propriety of section 10 (l) injunctive relief was removed by the issuance of these two decisions, the Board's determination that the longshoremen were not entitled to strike for this dockwork and the Alaska court's decision that it had jurisdiction

in the matter, the General Counsel of that time authorized injunction proceedings to restrain the longshoremen's illegal conduct.

Chairman McCONNELL. How long was the employer shut down during all of this activity?

Mr. BOTT. I think he was shut down for a very long time. I do not remember, but I think that that is a fact. I am told it was 80 days.

Chairman McCONNELL. What happened to him after that, do you know?

Mr. BOTT. Well, yes; after we got the injunction, that settled that dispute. I do remember that and that is about the time that I came to work in Washington, and the pickets were taken off and they had been sued, if you will recall, the union, and the employer obtained a very substantial court judgment. The pickets were off and the employer, I am informed, and I believe, stayed in business for a number of months until his mill caught fire and burned down.

It is an interesting story. We were running an election and our boys were in Juneau when his mill caught on fire. They ran with all of the population out to the mill and the owner of that Juneau Spruce Co. was so nervous he could not open the safe and our boys went in and helped him open the safe. That is maybe the only credit we can get, but he did remain in business.

Chairman McCONNELL. Mr. Bott, would you not say that this was certainly some kind of a jurisdictional problem, with the employer caught in the squeeze and with his plant shut down for 80 days, with no relief coming from the sources he might expect relief from? Would that not be the situation?

Mr. BOTT. You are absolutely right. At that time I described the legal problems, but today that would not happen. On a jurisdictional dispute today of that character, we can issue our 10 (k) notices of hearing and if they do not stop the jurisdictional dispute we can get an injunction and we would get an injunction.

I testified before the Senate that in many cases we have, I have obtained an injunction in situations like this where it is a very serious situation, and the jurisdictional dispute goes on, and we do attempt to get an injunction.

But I want to explain the criticism of Juneau Spruce in the context in which it arose, the difficult legal problems, and the first case under Telf-Hartley, and to explain the delay.

I do not see any fault in the case, in the people. The regional offices were following the pitch, the doctrine, or the law or the procedures as laid down by their bosses, by their superiors in Washington.

Chairman McCONNELL. I would say the employer was certainly caught in the middle in this thing, and for 80 days he was shut up, while all of this was going on.

Mr. BOTT. Certainly he was. I agree to that 100 percent, and we would do something today. I think we can.

Chairman McCONNELL. Are there any questions?

Mr. McCABE. Mr. Bott, I believe Mr. Card's criticism was directed at the Agency's delay in making up its mind as to whether this type of relief would apply.

He emphasized that the money loss he suffered during this 80-day shutdown left him in such financial straits that he was unable to recover from the setback of the fire. His real criticism seemed to be directed to the indecision of the agency, and he felt, as I recall, that

Congress intended that these jurisdictional matters be handled with extreme speed. That was the bone of contention he had. I believe that is correct.

Mr. BOTT. Yes, Mr. McCabe, and I say we do handle them faster today, that I personally will get an injunction if that jurisdictional dispute is not settled by the time we start our 10 (k) hearing, and many times we get it before that. That would only be a matter of a week.

We give them a warning and they know it. If they do not settle by the time the hearing opens they are going to be enjoined and we often do it faster.

The other point, the second point, is that the law contains a provision in 10 (k) for the Board holding a hearing on jurisdictional disputes, and it says that the Board shall issue an order unless the parties have agreed on methods of disposing of the issue before the Board issues the order.

So reasonable men could have thought that the parties were supposed to try to work it out first, before we got an injunction.

Be that as it may, my testimony in the Senate will show that we have used the injunction when it is necessary. I think, in a situation like this, where a man's business was completely tied up and he was being driven out of business, we would use it.

Mr. McCABE. I am sure no criticism was aimed at your present course of conduct in that type of case. The chairman was alluding to the fact that he lost his business while the agency was trying to make up its mind as to whether to proceed. That was the burden of Mr. Card's testimony; the chairman emphasized that.

Mr. BOTT. I think he recommended an amendment to the law, too, that these injunctions be mandatory, I think.

Mr. McCABE. I am not certain of that.

Chairman McCONNELL. All right, the next case, if there are no further questions on this.

Mr. PERKINS. I happened to be here when the charge was made. Your statement this morning clearly convinces me that you appear here in a straightforward manner, not withholding anything that the committee should know about, and you have made a great contribution to the Committee in the answer.

I think that you are to be complimented for such a forthright answer.

Mr. BOTT. Thank you, Congressman, very, very much.

The next case is the Homedale Tractor and Equipment case.

Mr. BARDEN. Mr. Bott, with reference to this Juneau Spruce case. Now, as I understand this case, while the entire mill may not have been closed down but 80 days, its operations had been hampered virtually from the beginning, had it not?

Mr. BOTT. I am willing to say that. I am not positive, but I think so.

Mr. BARDEN. Then there was a series of secondary boycotts placed on the unloading of the lumber by the concerns who had purchased lumber from them on the west coast.

Mr. BOTT. Those we enjoined, I think. Those we stopped, but there was interference, and I certainly agree.

Mr. BARDEN. Then they recovered a judgment for \$750,000, against the longshoremen's union?

Mr. BOTT. I do not know whether they recovered it, but they got a judgment.

Mr. BARDEN. It went to the Supreme Court.

Mr. BOTT. I do not know whether there is any money there to recover.

Mr. BARDEN. And it was affirmed?

Mr. BOTT. Yes, sir.

Mr. BARDEN. And they tell me that they have not gotten a penny from the judgment and apparently there is no way for them to get any.

Now, as I understood, one of the main suggestions by the officials of the Juneau Spruce Corp. was that they wanted the law amended in such a way that a union could not engage in the kind of conduct that it had engaged in, and destroy a company to the extent that a court of competent jurisdiction and final jurisdiction should render a judgment against them for their misconduct, and then that same union continue to operate and have good standing in the National Labor Relations Board.

What they want is that if a union expects to maintain good respectable standing, in the National Labor Relations Board, then it should pay its debts, and not continue to wreak havoc upon people, and then plead their irresponsibility to pay.

Mr. BOTT. I did not remember that point.

Mr. BARDEN. Just what is your opinion about that? Do you think that a union that indulges in that kind of practice and destroys a company to the extent that the court renders a judgment against them, that they can brush that judgment aside or evade its payment and continue in good standing?

Mr. BOTT. I do not think it is proper, but I think, one, I should think they should be enjoined from doing that conduct; two, they are sueable, and, whether or not they are judgment proof I don't know. But I do remember Danbury Hatters' case very well, being from the State of Connecticut, where the individual members of the union had to pay the judgments obtained against the union. And those of us who know our labor history know that it was pretty rough on them, although they may have been legally and morally liable; and Congress did not see fit to make the individuals liable; they made just the union and its assets liable.

Mr. BARDEN. Here is what I have in mind, Mr. Bott—

Mr. BOTT. I do not think it is right for them to run out on their judgment.

Mr. BARDEN. It goes deeper than a matter of opinion on this subject. I am discussing now some method of preventing its recurrence. In some States, for instance, if you have an automobile accident, say, and you damage somebody, and you do not carry insurance and you are not solvent and, therefore, you do not pay, the State law says you will either pay or you will put up insurance before you drive another automobile in this State. And I think that is good law.

Now, what I am getting at is how far can we go in that same direction in this law?

Mr. BOTT. I would stop with obtaining immediate equitable injunctive relief against the situation if it is determined to be bad enough. I do not know whether the public policy is great enough to require unions to put up bonds. I don't think so.

Mr. BARDEN. You do not think for a minute that the longshoremen's outfit could not pay a \$750,000 judgment if there was not some monkey business somewhere, do you?

Mr. BOTT. There may be some. I don't know, there may be some monkey business. I do not know whether they have \$750,000 or not. I am very much interested in finding out because we also have a judgment against them in our office in an unfair labor practice case.

Mr. BARDEN. What kind of a judgment do you have against them?

Mr. BOTT. We have got a judgment for about \$400,000 against the Marine Cooks and Stewards Union, which is closely affiliated with the ILWU.

Mr. BARDEN. Who is that in favor of?

Mr. BOTT. That is in favor of the Longshoremen's A. F. of L. union and nonunion employees who were fired and refused employment because of their failure to join the Marine Cooks and Stewards Union.

Mr. BARDEN. Is that union still in good standing with the National Labor Relations Board?

Mr. BOTT. We are settling the case, we are trying to settle it.

Mr. BARDEN. You are ducking this question.

Mr. BOTT. I am not. They have not refused to pay as yet. In fact, they have offered—perhaps I should not talk too much about settlement negotiations—but they have offered a substantial sum of money. And I would not want to hurt my settlement, Congressman, I do not want to talk about it any more. They have offered some money. We do not think it is enough, and we want more. They have not turned us down yet. We want to settle the case.

Mr. LANDRUM. Will the gentleman yield?

Mr. BARDEN. I am not interested in getting your head out of the crack of the fence, I want to provide some insurance to keep somebody else from getting in the same fix. Here is Juneau Spruce with \$750,000 and you say you have \$400,000. How many thousand does it take to be of sufficient importance that you think the law ought to be amended?

Mr. BOTT. We have not stopped negotiating. We are settling an unfair labor practice case. They have not refused to pay the money or pleaded irresponsibility or lack of financial ability or anything like that. We are negotiating out the details of how much the companies involved in the—

Mr. BARDEN. Would you oppose this: that any union that fails or refused to pay a judgment against it for damages caused by them is to put up a bond for future protection before they can be certified?

Mr. BOTT. I do not know. I am against putting anything more in the Taft-Hartley law.

Mr. BARDEN. You are against the Taft-Hartley law.

Mr. BOTT. I am not. I certainly am not. I am for the Taft-Hartley law.

Mr. BARDEN. Seriously, you say you are opposed to putting anything else in the Taft-Hartley law?

Mr. BOTT. Yes. I think it is—

Mr. BARDEN. You just do not think it ought to be amended?

Mr. BOTT. I did not hear that.

Mr. BARDEN. You think it ought not to be amended or changed or anything?

Mr. BOTT. I do not think, personally, that any kind of general amendments which would precondition access to Labor Board proceedings on certain conduct by the union, extracurricular conduct of the union, is a good thing. I have in mind—

Mr. BARDEN. I understood you and Mr. Herzog both to have a whole lot of recommendations for us the first time you appeared.

Mr. BOTT. I had some procedural changes. But I mean, substantive—for example, you are talking about whether the union should have to put up a performance bond.

Mr. BARDEN. We will go back to your statement. Where you said you were opposed to putting anything else in the Taft-Hartley law, now you say you are in favor of putting what you want in it?

Mr. BOTT. That is right, some minor things. But I am opposed, from an administrative point of view, and I am very worried about that, to putting anything in which makes some act or course of conduct or some status of the union a condition precedent for it to be able to use the services of the National Labor Relations Board, because every time you tie up something into the right to handle your cases in the Labor Board it destroys our processes and we get to enforcing two public policies. That is my biggest criticism about the 9 (h) affidavit, the procedural difficulties in it. And you recall I testified that if we had something else to offer I would like to have it, but that procedurally 9 (h) has not worked. That is my point about putting things into the Taft-Hartley law, where you say if you do not perform your contract, or any union which is not financially liable or has not done something under a State law will not be able to process cases, because the unions are in and out of the Board so often that there will always be a collateral attack on the union as to whether or not it has qualified under State laws or has performed under bond. And when I said I did not want anything else into the Taft-Hartley law I meant along that line, and I do not think that any substantial changes should be quickly put in, and that there should be careful consideration of them.

Now that I have gotten myself this far into the water, I think things like industry-wide bargaining, for example, need careful consideration and study, and things like that, I say, should not go in. I recall saying to take the law as you have it, I mean the frame of reference. I would not add substantially. I think there is a risk of breaking the law down. That is my point.

Mr. BARDEN. I do not believe and I do not think you believe that any unbalanced law will long survive approval of the American people. I just have that much faith in the American people.

Now, if your judgment of \$400,000 had been against a shipowner what would you have done?

Mr. BOTT. Half of it is.

Mr. BARDEN. What can you do?

Mr. BOTT. We are trying to talk them into raising the ante.

Mr. BARDEN. What do you mean by talk them into raising the ante?

Mr. BOTT. We are trying to settle the case. They say their liability is X amount of money and we say it is Y, more than they say, and we are trying to negotiate the details. It is just a lawsuit.

Mr. BARDEN. You have not gotten to a final judgment of where it is the collection of a judgment?

Mr. BOTT. Not in a civil sense.

Mr. BARDEN. You are not in the Spruce situation yet?

Mr. BOTT. Not in a civil sense, that is right.

Mr. BARDEN. You would not be so calm if you were in that jam, would you?

Mr. BOTT. If we had a court order we might be a little tough——

Mr. BARDEN. You choke it off?

Mr. BOTT. No; we do about the same thing.

Mr. BARDEN. I mean, you issue an execution?

Mr. BOTT. No; we try to settle. We try to get the money. We file for contempt.

Mr. BARDEN. You are misinterpreting it. I just say as a matter of business——

Mr. BOTT. You asked me what we would do.

Mr. BARDEN. As long as I practiced law, when I went into court and won a judgment and called for payment and they did not pay it, then, all right, I issued an execution on the judgment.

Mr. BOTT. We do not have that authority.

Mr. BARDEN. You do through the courts.

Mr. BOTT. We have to get an enforcement order, and we have got that. We have possible recourse to the contempt powers of the court under which you know the court will send the case to a master to take testimony on back pay. That is a long process. The master may not agree with us. He has to make his findings of fact on the money, and then we go back to the court, and maybe we will get the full amount and maybe we will not. But, precisely, we do not have execution, we cannot levy judgment, but we can apply to the court for contempt.

Mr. BARDEN. Everybody understands that. When you render your decree, then you go into the court for an enforcement order, don't you?

Mr. BOTT. Yes, sir.

Mr. BARDEN. And you can enforce it if they have any property?

Mr. BOTT. Yes, sir.

Mr. BARDEN. If they do not have any property, then they are subject to going into bankruptcy, or they are just out?

Mr. BOTT. That is right.

Mr. BARDEN. All right. That is not the case with this labor union, that I am trying to make walk up and be like other labor unions, or the vast majority of them, that can be responsible for the damage they do.

Mr. BOTT. Yes.

Mr. BARDEN. Now, I just wonder if you are in favor of an organization, of a labor union, going and committing, whether it be \$10,000 worth of damage or \$750,000 worth of damage, and having the court render a judgment and that they cannot be made to pay it, and then they turn right around again and do another \$100,000 worth of damage, and you go into court and you cannot make them pay it. Do you think that that is a good policy, to let that continue, or do you think there should be some insurance against that kind of activity?

Mr. BOTT. I would want to study it to find out how many times it happens, how prevalent it is.

Mr. BARDEN. If it were to happen one time to you you would think that that was a lot, would you not?

Mr. BOTT. I know, sir, but you would not pass a law in Congress against something which just happened once in labor relations. You would not want to make your Federal law that complicated and broad

as to cover every possible hardship or thing which might go wrong in the field. Again I repeat, that is where I say you have got just about enough in the Taft-Hartley law. I think the circuits are just about overloaded now. That is my view of it, sir.

Mr. BARDEN. Is there anything wrong with the policy?

Mr. BOTT. The policy of the union?

Mr. BARDEN. I mean in just plain fair justice.

Mr. BOTT. No; I agree, I think it is wrong for people to evade their just debts, there is no question about that, and if they have got any money they should pay it; if they have not, I do not know how you get it from them. That has been long a problem with Congress, in the Norris-LaGuardia Act and the Taft-Hartley law repeated it, should you collect from the individuals? That is a problem, a legislative problem that has been with us for 30 years. I do not know, I do not think you should collect from the individual unless he deliberately did the act.

Mr. BARDEN. I am not talking about the individual.

Mr. BOTT. We are talking about how you are going to collect the judgments.

Mr. BARDEN. How you are going to treat a favored union that is certified by your outfit. Do you think its certification should be withdrawn if they prove to be irresponsible?

Mr. BOTT. I want to apologize; I think I misunderstood you, in what direction you were asking me. About the certification, I would want to know before I recommended a law that says a union has to do certain things or meet its just debts or be financially responsible before it can handle cases in the Board, I would want to know how prevalent the problem is and how serious it is. Because if you put a thing like that in the law you open up for collateral attack, or an oblique attack on the proceeding, the question of whether a union is judgmentproof or not. And it will be used as a further device, I personally think, in all humility, to delay Labor Board proceedings.

Mr. BARDEN. You do not believe in an ounce of provision being worth a pound of cure?

Mr. BOTT. Well, I believe in using a rifle sometimes and not a shotgun because you are liable to get that shot flying all over and hitting other people.

Mr. BARDEN. Let us use a rifle now when it has just shown up for the first two or three times. What are we going to do? Wait until you have to have a machine gun?

Mr. BOTT. I do not know, I do not know how often it happens. Juneau Spruce is the first one I have seen with a \$750,000 judgment. I do not know whether unions are sued often or not at all. I understand that under the Taft-Hartley sections 301 and thereafter that unions are not often sued. That is my general information. I do not know. I do not know how serious the problem is, and I would not want to pass judgment on it. I think it is wrong not to pay your debts, but whether the Federal Government should want to pass another amendment I do not know. I question it; I seriously question it.

Mr. BARDEN. That is all I have.

Chairman McCONNELL. You have two other cases, Mr. Bott.

Mr. LANDRUM. Mr. Chairman?

Chairman McCONNELL. Mr. Landrum.

Mr. LANDRUM. I have just a question or two. I want to pursue this \$400,000 judgment you are talking about a little more specifically. That is a lot of money to pay. Who is it that had this dispute that resulted in that judgment?

Mr. BOTT. We have a Board order against the Marine Cooks and Stewards Union on the west coast.

Mr. LANDRUM. Who is we?

Mr. BOTT. The National Labor Relations Board.

Mr. LANDRUM. Who did the National Labor Relations Board represent in getting that order?

Mr. BOTT. We represented the individual employees who were refused employment because of an illegal hiring arrangement between the companies and the union.

Mr. LANDRUM. You as the counsel for the Board—

Mr. BOTT. Yes, sir.

Mr. LANDRUM. And your subordinates represented these individual employees and arrived at the decision somewhere down the line from the Board that these employees were entitled to \$400,000?

Mr. BOTT. No. I want to be precise. We got a decision finding that they had been discriminated against, they had been hurt and refused employment.

Mr. LANDRUM. Where did you get that decision?

Mr. BOTT. From the National Labor Relations Board. I prosecuted the case, and that was the decision. And after we get a Board decision the case reverts back to me again as counsel.

Mr. LANDRUM. I understand that.

Mr. BOTT. To get compliance with the order.

Mr. LANDRUM. I understand.

Mr. BOTT. Which we have tried to do for months. There are 175 or 200—

Mr. LANDRUM. I do not want any of that; I want to stay on this \$400,000 question.

Mr. BOTT. We are trying to compute it. That is what I want to talk about.

Mr. LANDRUM. After that has been referred back to you, now, you are in the stage of negotiation and still representing these individual employees for whom you have a Board decision in the amount of \$400,000?

Mr. BOTT. Yes, sir, representing them practically—

Mr. LANDRUM. I want to hear again, who is that judgment against?

Mr. BOTT. The judgment or the order is against both the companies and the union, joint responsibility.

Mr. LANDRUM. Then that puts you in this position: an employee of the Federal Government being paid by the Treasury, money from the taxpayers, prosecuting a civil claim against a union and against some employer?

Mr. BOTT. We do not look at it that way.

Mr. LANDRUM. I did not ask you how you looked at it.

Mr. BOTT. That is what you said.

Mr. LANDRUM. That is what position it puts you in.

Mr. BOTT. No, I don't think so.

Mr. LANDRUM. What position does it put you in?

Mr. BOTT. It puts us in the position of the Federal Government acting in the public interest, obtaining remedial relief for people who

have been discriminated against under the law. I am representing the Government. It is just like a wage-and-hour suit.

MR. LANDRUM. How many people does it take to create a public interest?

MR. BOTT. One.

MR. LANDRUM. Then under your theory you are entitled to represent one individual against an employer, sue for damages, and help him collect those damages, and you are acting as his attorney and counsel all the way through, employed by the Federal Government and paid by the Federal Government?

MR. BOTT. I prefer to say, sir, that we are acting as counsel for the Government in the public interest.

MR. LANDRUM. I did not ask what you prefer to say, I asked you if that really is not the case.

MR. BOTT. Then I will go further and say that my understanding is that we are acting as counsel for the Federal Government enforcing what Congress thinks is public policy. The collateral of it or the indirect effect or perhaps the practical effect is to represent the individual to see that he gets his money, but I think that happens under all violations of State laws where on wage and hour, health, safety, and so on, the attorney general proceeds in the name of the State, but the money may go to the individual.

MR. LANDRUM. I will ask you this: if you found an employer in the situation that you say you find these employees in would your theory permit you to represent him against the union and enforce an order?

MR. BOTT. Yes. We do it all the time, except there is not any back-pay thing for the employer. But we represent the employer in the same way that we represent these individuals. When the employer files a suit we represent him.

MR. LANDRUM. Then how does it happen that you are not interested in this \$750,000 judgment of the Juneau Spruce Co.?

MR. BOTT. Because that was a civil, private action given to him under the law where he can use his own attorney.

MR. LANDRUM. That is what I wanted you to say. I wanted you to distinguish for me the difference between a civil private action and an action as you described for this \$400,000.

MR. BOTT. Civil action is set up by Congress to give these private parties a right to sue for damages apart from the administrative proceedings set up by Congress.

MR. LANDRUM. Does it deny him the right to employ his own counsel and pursue his interest or does it require you to do it?

MR. BOTT. It does not deny him, the one section—

MR. LANDRUM. My question is: Why are you, General Counsel of the National Labor Relations Board, and your subordinates, paid by the Federal Government, engaged in what amounts to a private civil dispute in settlement of damages?

MR. BOTT. Because Congress thinks it is important that the national policy should be that people who get discriminated against should be made whole for the discrimination and that it should be handled by the Federal Government.

MR. LANDRUM. That is all.

MR. METCALF. May I ask a couple of questions?

Chairman McCONNELL. Mr. Metcalf.

Mr. METCALF. As I understand it, Mr. Bott, this \$750,000 suit is brought under title 3 of the act?

Mr. BOTT. Yes, sir.

Mr. METCALF. Will you, for the sake of the record, give us the authority that you have as General Counsel to bring this suit in which you have a judgment for \$400,000?

Mr. BOTT. I have it under section 3 (d) and under—

Mr. LANDRUM. Will the gentleman yield? I am not disputing his authority.

Mr. METCALF. I just want this put in the record, the portion of the statute that requires him to bring this action.

Mr. LANDRUM. I do not dispute his authority, what I am disputing is that we ought not to give him that authority.

Chairman McCONNELL. Proceed, Mr. Metcalf.

Mr. METCALF. Will you put in the section of the statute that requires or authorizes that?

Mr. BOTT. First, section 3 (d), just in passing, gives the General Counsel the authority to supervise unfair labor practices, and then I think the main section is section 10 (b) of title 1, which states:

Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing * * * and so on.

That is the enabling section. Section 10 (a), the general enabling section, reads:

The Board is empowered * * * to prevent any person from engaging in any unfair labor practice * * *

Mr. METCALF. And that is a parallel provision with the Wage and Hour Act and other labor acts where the Government does by statute collect?

Mr. BOTT. Yes, that is my understanding that it is.

Mr. METCALF. Then our problem here is whether or not such a provision is in the public interest to require you to perform the duties under the statute.

Mr. BOTT. Yes.

Mr. KERSTEN. May I ask a question, Mr. Chairman?

Chairman McCONNELL. Yes.

Mr. KERSTEN. Mr. Bott, the union in the case to which you have last referred, is that the marine cooks and stewards union?

Mr. BOTT. Yes.

Mr. KERSTEN. Against which you, in behalf of these individuals, procured this judgment? Is that it?

Mr. BOTT. We have a Board order, Congressman Kersten.

Mr. KERSTEN. Who is the president of the marine cooks and stewards?

Mr. BOTT. I think Bryson was.

Mr. KERSTEN. Hugh Bryson?

Mr. BOTT. I do not know whether he is today. I think he stepped down; I am not positive. He was the last president that I knew.

Mr. KERSTEN. Was that fairly recently?

Mr. BOTT. Yes; that is my information.

Mr. KERSTEN. I happen to know something about the setup, and that is why I was inquiring. Is the leadership of that union pretty

much as it has been through the past 7 or 8 or 10 years otherwise, other than Bryson, as far as you know?

Mr. BOTT. As far as my personal opinion is concerned, that is what it was.

Mr. KERSTEN. That is one of the unions that was expelled from the CIO for being Communist dominated?

Mr. BOTT. That is right.

Mr. KERSTEN. They operate largely in the Pacific, do they not?

Mr. BOTT. That is right.

Mr. KERSTEN. And supposing that it is Communist dominated, as the CIO found, and as I believe they are, it has a bearing on shipping to the Far East, including Korea, does it not?

Mr. BOTT. It certainly does.

Shall I go on to the next case?

Chairman McCONNELL. Yes.

Mr. BARDEN. I have one question. Did I understand you had issued a final decree in the \$400,000 case?

Mr. BOTT. We have got a final Board order, but not a court decree.

Mr. BARDEN. You have got the final decree of your—

Mr. BOTT. Of our agency.

Mr. BARDEN. And you are trying now to adjust and settle the difference in the amount?

Mr. BOTT. Yes.

Mr. BARDEN. They disagree with the finding of your board—

Mr. BOTT. That is right.

Mr. BARDEN (continuing). And you are trying to negotiate between the employees and the employer to reach a final sum?

Mr. BOTT. That is right.

Mr. BARDEN. And that is the policy of the Board?

Mr. BOTT. That is right.

Mr. BARDEN. I want to read you a letter from one of your officials, and I am not authorized to use the name of the company, but I happen to know the case quite well.

This grew out of two of the lawyers—there was one representing the company and one representing the employees—along with the Government man, discussing on the street the settlement of the case.

Mr. BOTT. Yes, sir.

Mr. BARDEN. There had not been any negotiation, but they just discussed it a few minutes. Subsequently, one of the men approached the counsel and mentioned something about it. But here comes a letter from the regional office, and it is signed by the examiner, and he starts off in the first person:

I have received a report that your company is contacting the discriminatees named in the above case and is attempting to arrange private settlement. In respect to any conversations the claimants and the company may have concerning either reinstatement and/or back pay, I should like to make it clear that this office must approve any settlement reached before the case may be closed on compliance.

Of course, that is elementary. Anybody with any brains would know that. I do not know why he had to use that much paper. [Reading:]

While the purpose of a back-pay award is to compensate the individual employees for losses suffered as a result of unfair labor practices, the award is made in effectuation of a public policy and as such has no private character whatsoever until it is received by the individual claimant. It is our practice, in

order to effectuate the purposes of the act, to require that no compromise settlement be made after a decision and order issues. The company is required to make full payment of any loss incurred by the discriminatees. The acceptance of a sum of money by a discriminatee in private settlement of a back-pay claim and the signing of a release by him can not be binding on the agency.

If you wish to avoid further litigation, I should be glad to compute the amount due the discriminatees as soon as you advise me of the steps outlined—and so forth.

Well, now, he says here that there is no place or time with the Board to discuss any settlement of a matter after the Board passes on it.

Mr. BOTT. I endorse that as a correct statement of the law and of the practice. He does not say that there is no time and place for a settlement. He says there is no time and place for a compromise, which may be different. Once the back pay is fixed arithmetically, you do not compromise, but before it is fixed arithmetically you have to compute the interim earnings of the individual, find out where he has worked, whether he received substantially equivalent employment or whether he looked for a job, whether he had any other losses such as traveling, and in the case I am talking about the Board's order is broad, and we are not even positive as to which class or what individuals are contained in the class of employees covered by the Board order.

The Board often leaves those details for compliance settlement; but, when you have 1 discharge or 2 or 10 and they are named specifically, compromise is out. The company is not supposed to make a private settlement with the individuals.

Mr. BARDEN. Here is the way the man interpreted this: The owner of the company did not know anything about it, as far as that is concerned, and certainly he had sense enough to know that it would have to be adjusted with the Board before it was handled. He just interpreted that to be some gratuitous harrassment.

Mr. BOTT. Yes; I see.

Mr. BARDEN. And there was not any need for that fellow to sit down and to begin with "I am informed of this and that and the other." This man had a pretty good idea of how you got informed. The man wrote him that kind of letter, and he just interpreted it to be an additional unnecessary harrassment on his part.

Chairman McCONNELL. Proceed, Mr. Bott.

Mr. SMITH. Mr. Chairman?

Chairman McCONNELL. Mr. Smith.

Mr. SMITH. Then, as I understand your position, Mr. Bott, it is simply this: that you, as a spokesman for the National Labor Relations Board, can compromise cases for employees, but the employer cannot. I do not know of any other litigation in the world where the parties cannot get together after a decision is made and reach an agreement in settlement except yours.

Mr. BOTT. We can make compromises when we disagree as to the facts and foresee long litigation ahead of us, but we do not permit, in our view of our obligation under the statute, it is true, the respondent employer or the respondent union to pay the money directly to the individual and to make those compromises.

We feel that arrangements should be made through us; that is right.

Mr. SMITH. As to those employees that you are representing in the Cooks and Marines Union out there, how are they going to feel about your compromising their situation?

Mr. BOTT. We are not compromising. Maybe it is a matter of words or semantics. We are trying to find out just exactly who and where and how much money they have got due, because they have been out of work for a long time and we have to make arithmetical computations as to every place the man worked, whether he should have looked for another job, and then we have to compute how much he would have earned if he had stayed on the ships; and that is not always easy.

The company says, "Well, he would not have sailed on that one," or "He would not have had that job."

So, that is where we get the debate, as to the dollars and cents. And sometimes we may be apart, in a big case, by \$50,000 as to what is the bill. But, once we are pretty sure of what the bill is, then there is not much room for compromise.

Lawyers always look to the cost of litigation, and we do, too. And if we can get a pretty good settlement that we think is in the public interest we will take it. We do not always hold out for the last dollar or two, depending upon certain situations.

In ability to pay, for example, is one of them. If the employer has been in serious financial trouble, we make arrangements like that. And I am sure, without having any experience in other agencies, that is the way you enforce, with some understanding, these back-pay awards or income-tax collections or what-have-you.

I agree with you—I know you do not want me to agree with you—but I state that is our position: that we monitor or represent the employees; we represent the Government in these back-pay cases, and the employer cannot make his separate deal with them, and we have been sustained by the courts in our position.

It is not a right, it is not a private right, so the courts say, it is a public right. It cannot even be garnisheed, that claim, as a claim owing to an individual; it is a claim owing to the United States for and on behalf of them. I admit that that is our position.

Chairman MCCONNELL. Next is the Homedale case. You may proceed with that.

Mr. BOTT. As to the Homedale Tractor and Equipment Co. in Homedale, Idaho, and the testimony of Mr. Cyril W. Radcliffe, I have to go into a brief chronology of this case.

As noted by the witness Mr. Radcliffe, this company was established in Homedale, Idaho, a small community of 1,500 people in 1948: On July 2, 1951, Local Lodge 1491, International Association of Machinists, filed a petition for an election among the company's employees. On July 16, 1951, Local Lodge 1491 of the International Machinists filed a charge in the Seattle regional office of the agency alleging that the company had discharged five employees because of their activities in behalf of the charging union; that they had refused to bargain with the union representing a majority of the employees, and had otherwise interfered with the rights guaranteed to its employees by the Labor-Management Relations Act of 1947.

Because of these unfair labor practices the union withdrew its petition for an election on August 24, 1951. After careful investigation our regional office determined that there was merit to the charge of unfair labor practices, and on December 5, 1951, issued a complaint

alleging that the company had violated section 8 (a) (1) and (3) of the act by the aforesaid discharges and by interference with the rights of the employees.

At the insistence of the region, the union had, in the meantime, dropped its refusal-to-bargain charge. That was done at our request. After we investigated that part of the case we asked the union to pull out its refusal-to-bargain charge.

The unfair labor practice hearing was conducted on January 14, 1952. On March 10, 1952, the trial examiner, Howard Myers, issued his intermediate report finding that the company had violated the act as charged.

On October 31, 1952, the National Labor Relations Board issued its decision and order finding that the company had violated the act as charged.

The company refused to comply with the Board order, and so the matter is now pending enforcement in the ninth circuit court of appeals in San Francisco.

In the meantime, the union had filed another petition along the line there, and the election had been conducted and the union had lost the election. Objections were filed by the union to the election, but they were found by the region to be without merit, and they were overruled. They were actually withdrawn at the request of the regional office, but, for all practical effects, they were overruled by the regional office.

The representation case, the election case, which you heard about, was consequently closed, and it is out of the picture.

Since the unfair labor practice case is presently pending in the ninth circuit court of appeals, we would not ordinarily enter into a public defense or debate of its handling. However, the charges leveled by Mr. Radcliffe in his testimony before the committee are so serious and have been given such widespread damaging publicity that this reply is required.

1. It is not possible to answer every charge made by Mr. Radcliffe.

In general, it must be remembered that his testimony is colored throughout by his belief that the case lacks merit. This is no phenomenon—like many another man, Mr. Radcliffe has run afoul of the law and he has lost his case. In this respect, it can only be said that the General Counsel, through the regional director of the 19th region, issued a complaint alleging that the company had violated the Labor-Management Relations Act of 1947 by discharging five employees because of their union activities and by engaging in other proscribed conduct.

A trial examiner, completely independent from the supervision of the General Counsel, listened to testimony received under proper judicial safeguards, and concluded that the company had violated the act. Upon appeal, the National Labor Relations Board, which had nothing to do with the issuance of the complaint or its trial, reached an independent but similar conclusion.

The matter is now before the ninth circuit, which is where it should be if the respondent questions conclusions of law reached so far.

We believe that there is substantial evidence on the record as a whole that this company discharged five employees because they attempted to organize a union; strategically timed an announcement of a retroactively effective profit-sharing plan, heretofore only under considera-

tion; and engaged in other violations of the act in order to defeat its employees' move to organize.

Only time and the ninth circuit can tell us if we are finally right. In the meantime, it does not appear that anything would be gained by arguing the merits of this case before this committee, although the handling of the case is, of course, the committee's concern.

On page 1941 of the printed record, Mr. Radcliffe states: "How does the NLRB investigate?"

Then Mr. Radcliffe describes it in his words, that the Government man comes straight out to the union headquarters and asks for their side of the dispute and that he never set foot inside the door to see what kind of a place of business he operated, never once did he ask to meet with the management that he was prosecuting, he was satisfied with the union story as the whole story, and he went back to Seattle and prosecuted the case on that basis.

In my view, it just did not happen that way.

Chairman McCONNELL. On what would you base your decision that it did not happen that way, Mr. Bott?

Mr. BOTT. I base it on, 1, the general and, I think, the universal practice of how to investigate a case and how they are investigated; 2, on the word of the person who investigated the case to me in his reports; and, 3, on internal evidence in the case, documents from company counsel, which show that we did make an attempt to get the company story. Those are the things I base it on, in short.

Chairman McCONNELL. One is a matter of judgment or opinion on your part. Now, the other would be factual if there were letters to prove that they endeavored to contact the company.

Mr. BOTT. We have them.

Chairman McCONNELL. In other words, I might look at any person and say that I think he is a bum, or I think he is honest, or I think he is dishonest. That is a matter of my opinion. I could be awfully wrong.

Mr. BOTT. Yes, that is right.

Chairman McCONNELL. In fact, we have had spies once in a while that taught Sunday school. You can see what can happen. I think we will have to throw out the opinion idea and be more factual in this thing. If you have proof of that, that would be very important.

Mr. BOTT. Well, I have proof. I mean, it is a matter of legal determination of its weight. I have witnesses who will say that their story is different, and that is some proof. The weight you give it, of course, is up to the committee. And some of this is a story that our people give—

Chairman McCONNELL. Are you going to bring this out as you go along?

Mr. BOTT. Yes, sir.

Chairman McCONNELL. All right, I am sorry I interrupted you.

Mr. LANDRUM. I have one further question about that.

Chairman McCONNELL. Yes.

Mr. LANDRUM. Are you also going to bring out testimony to show that this profit-sharing plan that Mr. Radcliffe testified about was retroactive?

Mr. BOTT. I do not have that particular point, but I will give the story on that. I do not know whether that is in here. I do not think that is in here.

We went into the case handling of it. Primarily, the allegation that he made that—

Mr. LANDRUM. You make the statement in your preliminary discussion here that they strategically timed an announcement of a retroactively effective profit-sharing plan.

Mr. BOTT. Yes, sir.

Mr. LANDRUM. As I remember the testimony of Mr. Radcliffe here, it distinctly stated that the announcement of this profit-sharing plan was made at a Christmas Eve party and that it was announced at that party that the plan would go into effect the following January 1 following that Christmas Eve.

Have you got any facts in here to refute that?

Mr. BOTT. No, sir. That is in the record of the proceeding, and I did not argue the merits of who did it, or who struck John. But we rely on the record of the transcript and the findings of the Board which we think are supportable. That is all I say, and I think they are supportable, but I am not arguing whether it did or not.

Mr. LANDRUM. I see.

Chairman McCONNELL. Proceed, Mr. Bott.

Mr. BOTT. I say here on page 3 that Mr. Radcliffe erroneously suggests that the company was not given an opportunity to present its story. Soon after the charge was filed the regional director of our office, by letter dated July 17, 1951, invited the company to "advise us as to your position in this matter."

That is a regular letter that goes out, and the company's lawyer is a well-known practitioner in the community who handles many Labor Board cases, and he knows the meaning of that letter. It means to supply your side of the story if you want. The company attorney is Mr. Weston of Boise. Throughout several years of dealing with the regional office he has consistently opposed regional personnel talking directly to his clients in his absence. That is another method which we do run across, and there is nothing extreme or unusual about it. That is Mr. Weston's policy, "Don't talk to my client unless I am there."

And I think Mr. Weston will——

Chairman McCONNELL. Unless he is there.

Mr. BOTT. Unless he is there.

Chairman McCONNELL. You can talk to him, but he has to be there.

Mr. BOTT. Yes. In other words, don't make a direct contact and go over there.

Chairman McCONNELL. Did this investigator actually talk to the management?

Mr. BOTT. I will come to it. He talked to Mr. Weston.

The field examiner, Hilbun, called the company from Caldwell, Idaho, and he attempted to talk to Mr. Radcliffe.

Now, prior to that time, I do not have it here, but on or about July 15 Mr. Hilbun saw Mr. Weston in Boise and said, "I have this charge which the union filed, and shall I talk to you about it?"

And I am informed that Weston said, "That is one we can beat you on."

That is the way he started on July 15. But on July 15 the charge had not been docketed yet. The charges were received in the field office and it was sent back.

This call in July of 1951 was not in the winter, as Mr. Radcliffe testified. Mr. Radcliffe was not in, so Hilbun talked to Mr. Mancke, the other partner. Mancke told Hilbun to contact the company's attorney, Mr. Weston, in Boise. He also informed Hilbun that Mr. Radcliffe was also in Boise that day.

Upon arriving at Mr. Weston's office, Mr. Hilbun discovered that Mr. Radcliffe had left. Hilbun therefore thoroughly discussed the case with Mr. Weston and suggested that he arrange a meeting between the field examiner and the two partners. Mr. Weston stated that that would not be necessary, that he had already written Seattle a letter setting forth the company's position.

Mr. Weston was apparently referring to a letter dated July 24, 1951, in which he stated—and I can certainly get the original for the committee—as follows:

I believe I have already discussed the case with you informally in my office, and I think you know the company's position with reference to this charge.

The company's position was that there was nothing to it and that "this is one that we can beat you on." That is their language. In other words, "If you think you have got a case, go ahead."

Attorney Weston again indicated in a letter dated December 5, 1951, that the company had had ample opportunity to present its position during the investigation. This letter states in part:

I received the copy of the amended charge filed in the above-entitled case, and inasmuch as there is no request to state our position and inasmuch as we have already given you the facts with reference to this case, we assume there is no occasion to make further statements

As previously noted, this amended charge contained no new allegations, but merely deleted, took out from the original charge the refusal-to-bargain case which we told the union was no good.

Contrary to Mr. Radcliffe's testimony on page 1941, that only three discharged employees were questioned, the field examiner interviewed 8 of the company's 11 employees.

Mr. FRELINGHUYSEN. Mr. Chairman, I was wondering if I could ask Mr. Bott this: "The difficulty of trying to follow testimony which is not before us now, Mr. Radcliffe's, and your justification of what the story is lies in the fact that there may not be a disagreement on page 1941, the three discharged employees—if it is the quote that you gave us just now—referred to a particular instance one evening where the field examiner discussed the problem with three disgruntled employees. But it may not be a misstatement of fact on Mr. Radcliffe's part. That may be the case, and you may not be denying that that was the case. He may have just done it with three that evening. He does not say that is over all.

Mr. BOTT. That could be Mr. Frelinghuysen. I understood it to mean that we only talked to three of the employees to show that we were not interested in the views of the other employees. That was the tone of it and that is the way I understood it.

Mr. FRELINGHUYSEN. The statements on page 1941 that you just read to us was:

Then in the evening they brought him out to Homedale and let him talk to these three men who had been discharged.

Mr. BOTT. Yes.

Mr. FRELINGHUYSEN. On that basis it certainly does not mean that there was not an attempt and a successful attempt to talk to more.

Mr. BOTT. He said that he did not talk to anybody else. That is what I understood.

Mr. FRELINGHUYSEN. On the basis of what you have told us about the testimony on page 1941, there is not enough to—

Mr. BOTT. I see; it may be another page, I don't know.

Mr. FRELINGHUYSEN. I do not happen to have page 1941, so I cannot tell whether there is something else.

Mr. BOTT. I say, in any event, he did talk to eight employees. There were only 11 or 12 involved in this case. In the election most of these employees voted against the union, so the field examiner must have talked to a good cross-section—and I just say it by the law of averages—a good cross-section of the employee complement.

Mr. FRELINGHUYSEN. But you are not necessarily refuting Mr. Radcliffe's testimony in every instance. This case about the talk with Mr. Radcliffe on July 24, 1951, was not in the winter, as Mr. Radcliffe testified, you said. Well, we do not have, again, before us that he did testify that it did take place in the winter. In the testimony you gave us he said there was a telephone call in December.

Mr. BOTT. Sir, he said, as I remember it, that "In the farm-equipment business we were not there because we take our vacations in the winter." He could not have been talked to because it was in the winter, and he took his vacation in the winter.

Mr. FRELINGHUYSEN. You are talking about a telephone conversation?

Mr. BOTT. No. I am talking about telephone conversations and his general availability. We say it was not in the winter, it was in the summer. He does not take his vacation in the summer, so it lends some weight to the fact that we tried to get in touch with him or did call him.

Mr. FRELINGHUYSEN. I have the testimony now, and I was just going to look up page 1941. It does not say anything that I can see on page 1941 that there was only an attempt to discuss the problem with the 3 employees, other than the one you just quoted about that there was a discussion with 3 of the employees one evening. But he does not say that that was all that took place.

Mr. BOTT. If he does not say that that is all that took place then I do not have to belabor it or talk about it.

Mr. FRELINGHUYSEN. There may be not as many differences between you as you seem to be pointing out.

Mr. BOTT. I wish that were true.

Mr. FRELINGHUYSEN. I do not want to take up any more time, Mr. Chairman. Thank you.

Chairman MCCONNELL. Proceed, Mr. Bott.

Mr. BOTT. And about this talking to the company, later on, in connection with the investigation of the objections which were filed to the election, which the region found to be without merit, Field Examiner Draznin asked Attorney Weston to have the officials of the company available for interview on February 20 or 21, 1952.

By letter dated February 13, 1952, Weston advised that the officials would be available, stating further:

I am having some difficulty explaining to my clients why they should be continuously called upon to take their time from their business, or why their employees should be continuously questioned and investigated after the company consented in good faith to an election which was lost by the union.

Mr. Radcliffe complains to the committee that the field examiner made no effort to see the management, but during the investigation his attorney complained that regional personnel tried to see the management too often.

With respect to going to see the union, I will skip over this next paragraph, the way a case gets started, whoever files the charge is interviewed first. If Mr. Radcliffe filed a charge on behalf of his company against the union we would go to Mr. Radcliffe and say, "Give us your story and your complete story." If the union filed its charge we would go to the union and ask them for the witnesses.

I want to skip to No. 3, about the secret election, on the bottom of page 5.

Mr. Radcliffe charged that "There is no such thing as a secret ballot in America today," because an employee had to sign his name to an envelope containing a challenged ballot. That is our regular procedure that we have used these many years in elections when you have challenges. When you have a large election or even a small one, when a man comes up and says, "I am entitled to vote" and you look at the list, the eligibility list, and he does not show up on the eligibility list which you have checked with the company and the union before, and he says, "But I was laid off temporarily, I have a right to vote," rather than hold up the whole line that is going into the polls we say, "All right, we cannot decide your eligibility right now."

The company officials may be down at the plant or up in the office and no one is there, and there may be some other challenges coming in of laid-off employees, sick employees, and so on, some employees who do not show up on the main list given to us by the company. So, we use the challenged-ballot procedure. Challenges are known in all elections. The way we do it is we give him his ballot and tell him to go into the polling booth to cast his ballot and to put it into this white envelope that has nothing on it at all, just a simple envelope, and to come back and put that envelope into an outside larger envelope. We may have a lot of these at the end of the election.

Now, to know which one is on the outside, so we can rule on the challenges later on, he signs his name on the outside envelope, not on the inside envelope, and before we count the ballots we may have the challenges. At that time the field examiner gets the two parties together and says, "Maybe we can work these challenges out before we open the ballots."

So, on a couple of telephone calls to the personnel director, maybe, he says, "Oh, yes, I remember him. This individual was sick. He should have been on the list." And everybody agrees to it. So, the big envelope is taken out and the little one is put in with any more which are going to be ruled valid, and then the rest of them are opened and put down into the ballot box before any ballots are counted.

But it is true, if you end up with election with only one challenge, and that challenge is crucial, in other words, it could throw a majority or not, the secrecy of the ballot is destroyed. That is the risk we run in every election. But it does not happen very often.

Now, in this case that did not happen because the election was so much against the union that this challenged ballot was never opened by anybody.

Now, I think it is a little thing, but the statement that there is no secret ballot, that is one thing we have not been criticized much about, our election procedure, and that is the story on the election procedure.

One other statement on this Homedale and I want to drop it, and that is the criticism about the regional office investigating objections to elections contrary to the rule that objections have to be filed within 5 days.

These objections were filed within 9 days or 10 days, and he said:

They would not explain to us why they were honoring them, and here they just changed the rules around to fit their own convenience,

meaning us. I am not quoting him exactly, but that is the way I understood it.

Our regulation on the time for performing an act, if it is under 7 days, is exactly like the Federal rules of procedure for service of papers, and so on, and it is in our rules and regulations, and it is set forth in this document, and I am sure counsel for the company had a copy of it. I think I wrote this rule myself, or I certainly was on the committee which wrote it. They were written in 1947 when I was on a committee to write all of these rules and regulations about the Taft-Hartley law. We lifted this rule right out of the Federal Procedure Act. It is our rule and it is the rule in the Federal district courts that if an act has to be done in under 7 days you do not count the date of the event, the date the election took place, and you do not count intervening Sundays and holidays. Intervening in this case in the period was Saturday and Sunday and Monday, which was a holiday by executive order. And it was not, as he said, I am sorry to say, that "the Labor Board decided to close their office" or decided to take a day off. Well, we decided to take a day off after the President of the United States issued an Executive order making it a holiday, and the office was not open.

Mr. SMITH. Mr. Chairman?

Chairman McCONNELL. Mr. Smith.

Mr. SMITH. When you are considering these holidays do you pay any attention to the State laws as to holidays?

Mr. BORR. When we are computing time?

Mr. SMITH. Yes. I call your attention to the fact that Congress does not have the power to set any national holidays, and there are no national holidays. They all must be ratified by the States.

Do you pay any attention to State holidays or States that have holidays down South?

Mr. BORR. I do not know. Something strikes my mind. I know that we had that problem on bank holidays, and I do not know as to whether or not that day is counted or not. In any event, the Government office was not officially open, and that excuses them. If the Federal courts were not open or the clerk's office was not open it excuses the doer or the protagonist or the person that has to perform the act from performing it on time.

In any event, I say we looked at the objections and did not see anything to them, and told the union to withdraw them. They never were ruled on, or passed on or reversed substantially. But we did accept them as being valid objections legally under this rule.

Mr. SMITH. That is all.

Chairman McCONNELL. Mr. McCabe?

Mr. McCABE. Mr. Bott, on page 5 you cite a paragraph from a letter written by Mr. Radcliffe's attorney. I wonder if we could go back to that for a moment. He says:

I am having some difficulty explaining to my clients why they should be continuously called upon to take their time from their business, or why their employees should be continuously questioned and investigated, after the company consented in good faith to an election which was lost by the union.

If I understood you correctly, you flatly contradict Mr. Radcliffe's statement that no attempts were made to contact him. I do not recall his testimony precisely, but as I remember it, he said no effort was made to contact him, although his employees were repeatedly interviewed. I wonder if we are not attributing something extra to him in this language. Could he not be objecting to the investigators' continuously calling on his employees? In other words, was he talking about the time of his business?

Do you know for a fact that he is talking about his own time? If so, it would flatly contradict the essence of his testimony, as I recall it.

Mr. BOTT. I do not know, Mr. McCabe. We were dealing through his lawyer most of the time, which we normally do. And we asked his lawyer for an interview of the client, and also made a direct call. That is all I can say.

Mr. McCABE. Yes, I appreciate the explanation you have given. I wanted to clarify it, though, because in the paragraph that follows you say Mr. Radcliffe complained to the committee that no one tried to see him, yet his attorney said he was sought out too often. I wanted to be clear on whether you were specifically contradicting his testimony, or whether it might not be a possible explanation to say he was objecting solely to the time of his employees that was used up.

Mr. BOTT. Well, "he" is distributed too widely there. "He" is Weston there, and Weston is speaking for his client saying that "He" is objecting to taking their time, the partners' time from the business, or, the disjunctive, why the employees should be questioned. He is talking about management—

Mr. McCABE. Then to clear it up, are you saying that Radcliffe was sought out, that many attempts were made to contact Radcliffe directly, which is contrary to what he told us? That is the point I wanted to emphasize.

Mr. BOTT. Yes, sir.

Mr. McCABE. I did not know whether you wanted that implication to stand.

Mr. BOTT. I certainly do; yes, sir.

Mr. McCABE. That is all.

Mr. FRELINGHUYSEN. I should also like to ask to make it clear that you are saying in contradication to Mr. Radcliffe's testimony that there was no riding around in cars with union officials, either their cars or the field examiner's cars, and no too close association between the field examiner and the union officials, which was the gist of Mr. Radcliffe's point of view?

Mr. BOTT. I have to break your question up into two parts. There was no too close association with the machinists' representatives, but in this case the field examiner did not have his own automobile in this particular incident in Boise, and he was driven by the IAM representa-

tive to the homes, or to some place of those three individuals that night. I do not deny that he associated with the union representative. That is the man we go to when the charge is filed, and we ask him where the witnesses are.

This one time, it so happens, and I am not putting it in as a defense, but this one time this one field examiner did not have his car out on the road where he usually hits all these cases; he did fly to Boise, and he did not have transportation and he was driven.

Mr. FRELINGHUYSEN. Is this one time on the 22d of December that you are talking about?

Mr. BOTT. No; I am trying to reconstruct this. This one time when the field examiner was accused of going right to the union there——

Mr. FRELINGHUYSEN. The discussion in the evening was on the 22d of December, I think. That is the trouble here. We haven't got apparently enough grasp of the facts ourselves.

Mr. BOTT. It so happens I talked to this individual myself, and only on one occasion was he driven by the union. He does not make a practice of it. He has his own automobile and does his own investigation and his own traveling around, which is our general practice. But I would not say at all that we do not take rides from the charging parties.

Mr. FRELINGHUYSEN. You say in your testimony that he used his own car. I am still not sure what town we are talking about.

Mr. BOTT. Congressman, I apologize. I did not hear your question. Would you say it again?

Mr. FRELINGHUYSEN. On the bottom of page 5 you say that Mr. Hilbun used his own car and he did not return to Boise. That is at the bottom of your own testimony on page 5.

Mr. BOTT. Mr. Hilbun told me personally that he normally uses his car. He used it on this case, but he did not have his car on one occasion during this case, and he was driven by union representatives. On that one point I do not contradict Mr. Radcliffe, at least I do not mean to.

On the point about whether there was, about the inference of undue association with the charging parties, too close a relationship, I do. We try to have our own automobiles and try to investigate independently, even keeping away from having anybody in the room. But you cannot always do it when you are out in the open spaces where transportation is not too good and you do not have an automobile or you do not happen to have it with you.

Mr. FRELINGHUYSEN. In an earlier point in your testimony you talked about the fact that everybody likes to kill the umpire, or words to that effect. If the umpire did travel around with one of the teams you might reasonably say that there was perhaps a bias, a leaning toward one side rather than the other, I should think.

Mr. BOTT. If he "traveled around" in quotes, socially, or too close on the job, yes; but these people are all together.

Mr. FRELINGHUYSEN. We hope that they are sociable if they are in the car together. I should assume they must be on reasonably friendly terms.

Mr. BOTT. We have been driven by company-charging parties to get a witness, told where they are, and transported there. I do not like it. You have to sometimes be practical. I do not like it. I wish we could operate completely apart from everybody.

Mr. FRELINGHUYSEN. If we generalize a little bit, do you think the criticism such as Mr. Radcliffe represents, criticism of the procedures in the field, are simply due to disgruntled litigants? Is that what you consider Mr. Radcliffe, and is that what you consider the bulk of the criticism that is made about the handling of the cases in the field?

Mr. BOTT. I honestly do. Whether I am wrong or not you will have to decide. In my heart that is, I feel, one of the main things.

Mr. FRELINGHUYSEN. Do you not feel also that it would be possible for both sides to color their story, and with all due respect to Mr. Hilbun, that he may be coloring his story to make it appear as best he can from his point of view, just as maybe Radcliffe tried to color his side?

Mr. BOTT. It is possible. I do not believe it. He is telling us the facts. He is not disagreeing much except with something that is in a state of mind that you could not prove, where he puts a different interpretation on it.

Mr. FRELINGHUYSEN. I am not sure of the facts from what we have discussed about cars and how many witnesses. Certainly you are not flatly contradicting all of Mr. Radcliffe's testimony, even those parts that you have taken out. You are not contradicting him by saying that eight employees were interviewed, and you are certainly not contradicting him in saying that a union car was used to transport around one of your examiners. At some point in the process that certainly was done.

Mr. BOTT. On the union car I am told that is right by the individual who told it to me. That is one reason why I think he is giving me a straight story on everything else. On the eight, as I understand it, Mr. Radcliffe left the implication that we were not interested in talking to the employees generally, we were only interested in talking to the disgruntled employees.

Mr. FRELINGHUYSEN. From the letter quoted about Mr. Weston, it did not show that you were contacting or trying to contact and perhaps bothering his employees.

Mr. BOTT. I hope so.

Mr. FRELINGHUYSEN. There is plenty of evidence to show there was some contact made.

Mr. BOTT. I think so.

Mr. FRELINGHUYSEN. That is all.

Mr. SMITH. Mr. Chairman?

Chairman McCONNELL. Mr. Smith.

Mr. SMITH. Mr. Bott, I want your personal opinion about this now. Mr. Radcliffe, the disgruntled litigant, testified that for 7 years it had been the practice of his company to permit their employees to use secondhand tractors, use them in the springtime to plow their gardens. He also testified that when an employee wanted to move he would let them take one of the company trucks. And Mr. Radcliffe testified that that was held to be an unfair labor practice.

I want you to tell me if that is your opinion.

Mr. BOTT. I am going to speak from memory. I do not know that he testified that it was held to be an unfair labor practice.

Mr. SMITH. Just a minute. [Reading:]

What were the reasons for invalidating this election? Among the other unfair labor charges filed against me is this one: "Granting to the employees in the

unit free use and access to company-owned machinery and equipment to be used for the employees personal use."

Mr. METCALF. On what page is that?

Mr. SMITH. Page 1942.

Mr. BOTT. First, he said, "What were the reasons for invalidating this election?"

Mr. SMITH. He said they charged him with an unfair labor practice. That is what he said.

Mr. BOTT. But it was not held to be. I think they charged him in the objections to the election with the use of the company cars. The union said it was an unfair labor practice. The Government never did, to my knowledge.

Mr. SMITH. Do you think, as a personal opinion, that that is an unfair labor practice?

Mr. BOTT. Generally, I would say no, as a lawyer.

Mr. SMITH. What?

Mr. BOTT. Use of company cars generally for private business or something like that?

Mr. SMITH. Yes.

Mr. BOTT. No, I don't see anything wrong with it. I can see in the context where it might be. I would just have to be right when I answer these questions to you. I mean, in a certain case it could be. We did not hold that it was in this case. Generally it would not be, but I could see the use of company facilities or something in some context before an election might be improper.

Chairman McCONNELL. Of course, not if it is a 7-year policy.

Mr. BOTT. No, I forgot that. I forgot that statement of fact as you gave it originally. I do not see that it is.

Mr. SMITH. That is all.

Mr. METCALF. Mr. Chairman?

Chairman McCONNELL. I just wanted to ask one question.

The thing that is annoying me a great deal, Mr. Bott, was this when I read it. Mr. Radcliffe said it in one of his paragraphs. [Reading:]

I am going to read directly to you what the trial examiner says:

"Even if there was no direct evidence of respondent's knowledge of the employees' union activity prior to the June 20 meeting, it is reasonable to conclude from the fact that during a period of about 3 weeks prior to June 20 the employees had held two organizational meetings in a small community in which respondents' establishment is located and had discussed the union in respondents' small shop, that respondents knew of the employees' union activities prior to June 20."

In other words, there again is no direct knowledge, and it is admittedly but an assumption. Are we using that type of background to determine our conclusions regarding cases in the various regional offices throughout this country in cases of this nature?

Mr. BOTT. May I answer you?

Chairman McCONNELL. Yes.

Mr. BOTT. First, we are not using them in the regional office. That was a trial examiner's finding after a hearing. Let them answer for themselves. But I will say this much, that it might be a reasonable inference that a judge could draw of knowledge, but we, now, the prosecutor, the attorney who tried the case, we did not rely on that, as I remember the record, and this record will have to be reviewed by the court. The trial examiner said, "Even if there were no direct knowledge" as I heard your testimony.

Chairman McCONNELL. That is right.

Mr. BOTT. Then there could be an inference.

Chairman McCONNELL. Even if there was no direct evidence of respondents' knowledge, regardless of not having the evidence, he is going to judge it anyhow?

Mr. BOTT. I want to answer for myself. I have got all the problems I can handle, for the people who tried the case.

We alleged direct company knowledge, as I recall it. That is as little as I know about the transcript in that case. We tried to show, as I recall, that Mr. Radcliffe himself talked to one employee and said, "You know I know what is going on down at those meetings." We tried to put in direct—

Chairman McCONNELL. That testimony, as I understand it, was later changed or discredited.

Mr. BOTT. I do not know. I just cannot say whether it was changed or discredited—it was not discredited. I mean, I do not know what the trial examiner's basic findings are.

Chairman McCONNELL. I ran across that just a few minutes ago, something about some testimony that was taken of a witness about conversations that took place showing that Mr. Radcliffe or the management would know about this situation, and that was changed later.

Mr. BOTT. No; that is Mr. Radcliffe's testimony you are referring to. Mr. Radcliffe said that this witness did not have a good memory, that he changed his testimony after a document was shown to him.

Chairman McCONNELL. The witness is Stimmell. Mr. Radcliffe says:

For example, the trial examiner devotes considerable space here to conclusions based upon what he called the credible testimony of a witness named Stimmell even though the transcript shows clearly that the witness gave false testimony, which was only corrected late in the hearing when a manuscript was produced in his own handwriting which forced him to refute earlier statements. Notwithstanding that, the trial examiner gave full credit to all his testimony.

How about that?

Mr. BOTT. I will refer you to page 11 of my statement and following where I analyzed that, perhaps successfully, perhaps not. That is up to you. I can read it, but I do not want to take your time. I skipped that in my statement. On pages 11, 12, and 13 we take Stimmell's testimony and we analyze this credibility question about the date, and show that he did not know, he was not sure, he did not perjure himself. He was not sure whether it was the 15th of June or the 15th of July. We show how witnesses are in cases, because Mr. Radcliffe himself, he testified first that—I want to be sure about this—he testified first that it could not have happened before July 15. That is his testimony in the record of the case, but in this record in this hearing he fixed it as being earlier. In our case he could not fix the date either. I say, "Well, there are a couple of witnesses arguing about whether a thing happened. I do not know whether it—"

Chairman McCONNELL. The thing that annoys me so much in the testimony we have had is this: I do not know the accuracy of a lot of it, naturally, just sitting here hearing it for the first time, but we get the impression so often that back in the areas where all of these disputes and problems are arising that there is a tendency to assume something rather than actually knowing in some of these cases, and I think if you

are going to hold an employer or a union responsible on certain things you ought to know what you are basing it on. For instance, you say here there was no direct evidence of his knowledge, and yet you are going to hold something which has a critical effect in the decision later, and I think you ought to be very sure of your evidence before you hold these things. That is my point.

Mr. BORT. Yes, I know. I agree. I can only say, as I said earlier, that 65 percent of the cases do not ever get to this stage where we try them. We winnow and look over the stuff in the regional office and throw it out.

One of my criticisms of our people is that they do it so carefully that when we get to the speed problem I get tied up by the due-process problem, and I tell our regional attorneys, "For gosh sakes, don't spend so much time trying to so carefully review all of them."

Chairman McCONNELL. Of course, on this matter of speed—in this case the Government immediately sent an investigator down from Seattle to investigate the charges. How does he investigate? He goes straight to the union headquarters—that is all right, I don't mind that—to ask them their story. Apparently he has gone back and forth in front of the employer's store. According to the geographical location of the store he has to pass it when he finishes at the union headquarters. Why did he not stop in the store? It does not make sense.

Mr. BORT. It makes sense. He talked to the lawyer and said, "How about it? Will you arrange a meeting?"

Chairman McCONNELL. An investigator can certainly stop in a store.

Mr. BORT. Weston, the lawyer, said, "Don't talk to my clients when I am not around."

Chairman McCONNELL. Are you going to listen to just one side and what they say? If I were an investigator and I wanted to get the facts and I wanted to be sure I was accurate I would drop in and talk to the proprietor of the store. Why not?

Mr. BORT. That was the company's lawyer that said—

Chairman McCONNELL. If Radcliffe said at that time, "See my lawyer before you talk to me," all right, but the investigator makes no statement here that he even stopped in that store when he went back and forth after visiting the union headquarters. If he wants to save time and if he wants to be fair then he should go to the headquarters and to the store and play it that way. That makes sense to me.

Mr. BORT. It makes sense to me to investigate your case wherever you can and as easy as you can and so on. It is not always easy, from a public relations point of view to do that. The attorney for the company says, "Talk to me." That is what many of them do. And they do not like this talking to the client. So we try to be sensible or practical, and we talk to the lawyer first, and then we talk to the employees if we can get to see them. Sometimes we cannot. And this lawyer, in effect, told us in the beginning, which is not in this statement but which was told to me this morning, "I will see you in court." Right from the time the charge was filed. "This one," he said, "we can beat."

Chairman McCONNELL. Mr. Landrum?

Mr. LANDRUM. One question, Mr. Chairman.

Mr. Bott, on page 2 of your prepared statement, down near the bottom, you made this statement:

We believe that there is substantial evidence on the record considered as a whole that this company * * * strategically timed an announcement of a retroactively effective profit-sharing plan, heretofore only under consideration.

Now, on page 1948 of Mr. Radcliffe's testimony, at the bottom of the page, he says this, and I am quoting Mr. Radcliffe:

In an attempt to show that the profit-sharing plan was put into force to thwart the organizational efforts, the attorney for the General Counsel for the NLRB questioned me in this manner. He said, Now, I understand that you have a profit-sharing plan that was instituted in the month of June; is that right? And I answered and said, "No," that is not right.

And he said, Do you have a profit-sharing plan?

I said, "Yes." The profit-sharing plan was announced to the employees at a Christmas party on December 24, 1950, a full 6 months before any union activity ever started.

And I am still quoting from Mr. Radcliffe:

The Board in Washington ignored that testimony completely. They ignored the transcript of that completely, and they said that it is obvious—I want to read it to you:

And I am reading from the Board's decision which he quoted to us:

"We agree with the trial examiner that the respondents interfered with, restrained and coerced their employees. As discussed in the intermediate report, this conduct consisted of strategically timing their announcement of the retroactively effective profit-sharing plan so as to demonstrate to the employees that there was no need for a union in order to acquire benefits."

Now, I want to ask you this question with that statement.

Do you have any testimony in the record, or any evidence in the record, whatsoever, to refute Mr. Radcliffe's statement on this profit-sharing plan?

Mr. BOTT. You mean in the record of the case which was tried?

Mr. LANDRUM. Yes, sir.

Mr. BOTT. I hope so. I do not have personal knowledge, I cannot say.

Mr. LANDRUM. If you do not have that then how can you make this statement that you made on page 2 of your testimony?

Mr. BOTT. We were told by the people who tried this case that they put in evidence to sustain that finding—

Mr. LANDRUM. Then you come to this committee, or you sit down and write a decision which says:

We believe that there is substantial evidence on the record—

Mr. BOTT. Yes.

Mr. LANDRUM (continuing):

considered as a whole that this company strategically timed an announcement of a retroactively effective profit-sharing plan.

And you have not read it and do not know it yourself. You are the author of this, are you not?

Mr. BOTT. Well, with some help. I have not read that transcript.

Mr. LANDRUM. In any event, you have got to answer for it.

Mr. BOTT. That is right.

Mr. LANDRUM. Do you have anything to refute that?

Mr. BOTT. I think the transcript will bear us out. I am advised by my associates that it would.

Mr. LANDRUM. I want you to point out to me—I am not defending Mr. Radcliffe—but I want to see if he is telling us the truth, or whether you are telling the truth or not.

Mr. BOTT. I will have to read the transcript.

Mr. LANDRUM. Then you made this statement without having read the transcript?

Mr. BOTT. Yes, sir.

Mr. HOLT. Mr. Chairman?

Chairman McCONNELL. Mr. Holt.

Mr. HOLT. Mr. Bott, on page 1943, to get back to the holidays, down at the bottom, the second paragraph from the end, Mr. Radcliffe stated that when his attorney asked to see the regulations governing the holidays, the Board's rules and regulations governing holidays, the field man said they were not for inspection and they could not be seen, and really it was none of their business.

Is that general practice?

Mr. BOTT. No. And I do not know whether that happened——

Mr. HOLT. Are not the rules and regulations public?

Mr. BOTT. Yes, they are public documents, and I am sure all the people who practice labor law have copies. I know we send out enough. There was another document, this field manual, the internal operating procedures of the people for guidance to them. And Draznin said—this is what I am told—that “It is also in my instructions,” and then Weston is supposed to have said, “Let us see your instructions,” and he said, “That is private.”

But on the rules and regulations, that is not private. That is in this book I have before me.

Mr. HOLT. You were not referring to the rules and regulations?

Mr. BOTT. That is public.

Mr. HOLT. It was just a letter?

Mr. BOTT. Rules and regulations are printed by the Government Printing Office, and they are published in the Federal Register.

Mr. HOLT. Then he was not referring to the rules and regulations, he was referring to a letter or something else?

Mr. BOTT. Our internal field manual, that big book.

Mr. HOLT. Is that public, your internal field manual?

Mr. BOTT. No.

Mr. HOLT. It was just for whom? Just members?

Mr. BOTT. Just for the investigators, how to investigate a case, things you are supposed to do.

Mr. HOLT. Do you think it is proper for the regional director or the field men to ride to and fro to visit these cases with either side?

Mr. BOTT. No. I would like to avoid it. I think we avoid it in 99 percent of the cases.

Mr. HOLT. Are there any rules or regulations?

Mr. BOTT. Yes, there are instructions to——

Mr. HOLT. Is that against the rules, or is that mentioned in your rules?

Mr. BOTT. It is covered.

Mr. HOLT. How?

Mr. BOTT. By general instructions to avoid the appearance of partiality and too close connection or contract with any of the parties to the case. In this case, as the facts are given to me, I understand it, and I do not make any point about it—I would prefer that we all be

able to keep ourselves away from the charging parties, but you cannot do it at all times as practical men.

Mr. HOLT. Why not, Mr. Bott?

Mr. BOTT. Well, because I guess it is the nature of the case. They say, "Well, I will take you out to a farm on Route Such-and-Such where this man lives." It is convenient that he drive you there. You may not have your car on that trip.

Mr. HOLT. Should not both parties or both litigants be in this car at the same time?

Mr. BOTT. No; we are investigating. Both parties should be present when a case is tried. I do not see anything basically wrong in investigating a case and being with anybody who is giving you information. You should be judged on what goes into the record. But because of this public-relations thing which I mentioned, and everybody is aware of, we try to lean over backward not to associate too much with the people who are giving us the information, and that is pretty hard sometimes. They make out the case for us.

Mr. ELLIOTT. Will the gentleman yield?

Mr. HOLT. Yes.

Mr. ELLIOTT. When you are investigating a charge by a charging party you are in the same position that a lawyer is when he talks to his client, because the charging party is, for the time being, your client.

Mr. BOTT. In that sense.

Mr. ELLIOTT. You agree that from a public-relations standpoint it is not good to associate, especially to drive from one place to another, with the charging party in his automobile.

Mr. BOTT. I certainly do, and this is one problem which comes up and has come up and haunted us ever since 1935—association—and I agree that it is a problem.

Mr. ELLIOTT. Thank you.

Mr. HOLT. I understand it is a problem. I want to know how you want to solve it.

When you get a complaint of partiality, do you have an investigator you send out from here? Did you take Mr. Hilbun's word in this instance?

Mr. BOTT. We have investigators who try to do the best job of getting at the facts of what happened. You talk to the other side and the person who made the complaint about partiality. Investigating a man's mind about his attitude—that is, you know, bias—is pretty tough.

Mr. HOLT. I am talking about specific action; I am not talking about a man's mind.

Mr. BOTT. You know that a charge has been made on a specific act, and we try to find out whether it happened, and make a determination, and they bring it to me or to the man under me——

Mr. HOLT. I have one other question.

Mr. BOTT (continuing). And I try to decide it.

Mr. HOLT. How do you handle your public relations in your office, first, here in Washington, and out in the field? The reason I bring it up is because on page 1952 or thereabouts Mr. Radcliffe states he was greeted by a barrage in the Boise papers about his Homedale firm being found guilty.

Does your local regional office issue press releases to the newspapers? How do the newspapers get it?

Mr. BOTT. It is generally handled through Washington, and would be picked up on an AP wire, I would think. That is not my department, but I will come back to what is mine.

The decisions, I think, are left on a press table. If it shows—now I am getting into a field that is really not mine.

Mr. HOLT. But nothing is done in the regional office?

Mr. BOTT. No. I think a director may have local relations with the press in Seattle or Chicago where the reporters are calling up from time to time and asking "Do you have anything interesting?" He might say, "I have a decision." That is where I want to hedge on that point. I do not know about Seattle, but in Chicago I might tell them about elections or maybe a rare and unusual, interesting complaint. But I kept the respondents and the unions and myself out of the newspapers.

Mr. HOLT. Thank you very much.

Mr. BOTT. Thank you.

Mr. METCALF. Mr. Chairman?

Chairman McCONNELL. Mr. Metcalf.

Mr. METCALF. I would like to make a comment as to how the Ninth Circuit computes time. I had an experience myself that may be enlightening as to the circuit courts' interpretation of these rules of civil procedure.

I had a writ of habeas corpus. The rule requires that the district attorney be given 5 days' notice. Last year, by Executive order, the President said that the district attorney's office would be closed on the day after Thanksgiving, on Friday and on Saturday.

I filed a motion on Wednesday, put it in the mail in plenty of time to be there by Friday for the following Friday, or nine days' notice to the district attorney.

When I appeared the following Friday I was met with that I had not given sufficient notice because of this Executive order of the President closing the Federal courts and the Federal district attorney's office on Friday.

I made the same objection that you have made: that holidays are set by the legislature of the State of Montana. I was thrown out of court. My notice was insufficient; I had not given the proper 5-day notice, and it was sustained, that decision, by the Ninth Circuit Court of Appeals. And I had no knowledge of the fact that there was an intervening holiday on Friday.

Mr. BARDEN. May I make one request?

Chairman McCONNELL. Yes.

Mr. BARDEN. Mr. Bott, I wonder if it would be a fair request, in view of the fact that you are going to discuss this Morehead City Garment case—

Mr. BOTT. I did not plan to take that in detail. I planned to take a shorter case.

Mr. BARDEN. I wanted to discuss that. If you have a copy of the circuit-court-of-appeals decision in that, I wish you would let some of your aids pick it up when you come back, and then I think the committee would be interested in looking at the thousand pages of instructions to your field employees.

Mr. BOTT. Yes. I am sure I can get a copy of that; certainly.

Mr. BARDEN. I thought I would mention that.

Mr. METCALF. May I ask about another matter, Mr. Chairman?

Where is Mr. Herzog's testimony going in the record?

Chairman McCONNELL. It will go in the record right at the beginning, and then Mr. Bott would follow right after that.

Mr. METCALF. If I may be recognized after we reconvene, I will make a statement as to Mr. Herzog's testimony.

Chairman McCONNELL. Yes.

The committee will recess at this time until 2:30.

(Whereupon, at 1:05 p. m., the committee was recessed to be reconvened at 2:30 p. m., this same date.)

AFTER RECESS

(The hearing resumed at 2:30 p. m.)

Mr. SMITH (presiding). The committee will come to order.

Mr. BOTT. Congressman Smith, I have one other case which I will try to paraphrase.

Mr. McCABE. Mr. Bott, had you finished your discussion on this Homedale case for the moment?

Mr. BOTT. Yes. I skipped some parts of the statement.

Mr. McCABE. Were you about to go on to another case?

Mr. BOTT. Yes; another case.

Mr. McCABE. Just before lunch I wanted to ask this question. It may be a more appropriate question for Mr. Ringer or for the representative of the Board.

On page 1952 of the hearing which carries Mr. Radcliffe's testimony, he says:

This is the most serious thing in the entire case.

It is an offshoot of the matter Chairman McConnell discussed before he left. That is, the finding of the trial examiner that—

Even if there was no direct evidence of respondent's knowledge of the employees' union activity prior to the June 20 meeting, it is reasonable to conclude from the fact that during a period of about 3 weeks prior to June 20 the employees had held two organizational meetings in a small community in which respondent's establishment is located and had discussed the union in respondent's small shop, that respondent knew of the employees' union activity prior to June 20.

That is the end of the quotation from the trial examiner which Mr. Radcliffe supplies.

Mr. Radcliffe then goes on to say:

In other words, there is no evidence to support the charges but you live in a small town and in a small town everybody knows everybody else's business, and you must have been aware of the meetings somehow.

And he goes on to say further to this committee:

Gentlemen, to me that is probably the most serious thing in this entire case, that the Government can find you guilty on such a flimsy charge.

Now, I wonder if either of the gentlemen with you, or you, Mr. Bott, might care to comment on that, since Mr. Radcliffe himself said he considers it the most serious thing in the entire case, and he is the gentleman who presented the matter in the first place.

The examiner, if this quotation is true, said, in effect:

Even if there were no evidence of respondents' knowledge, I think he knew anyhow, because he lived in an area where everyone knew everyone else's business.

That is the nature of the charge Mr. Radcliffe levels at this trial examiner.

Mr. BOTT. I will answer for myself this way. I do not know everything the record shows, but we as attorneys put in what we had. I think and I am morally certain we put in evidence of some knowledge. We hope we did. But I am not going to comment on the statement that regardless of whether we did or not, the reputation in the community or being a small town everyone would know it. I do not know what our theory was on that.

But it is possible, but I want to restrict myself to the statement that we tried the case, and I think tried to establish that the company had knowledge, and I do not want to comment on the trial examiner's evaluation of the evidence in the case. I think he should do that, or someone else.

Mr. McCABE. Apparently there is no doubt that your subordinates did submit evidence, because the trial examiner said, "Even if there had been none," he would still find as he did. I thought since we were passing by the case that either Mr. Ringer, or the spokesman for the Board, or both, might wish to comment before we left the matter.

Mr. RINGER. At this time, Mr. McCabe, or later when I am called on.

Mr. McCABE. If you wish to comment, you may do so.

Mr. RINGER. I will do whatever the committee desires to be done. If you wish to take that up at this time, I will be glad to do it.

Mr. STYLES. Mr. Chairman, I am Paul Styles, Acting Chairman of the Board, and would it be all right for me to answer at this moment, rather than Mr. Ringer?

Mr. SMITH. Go ahead and answer.

Mr. STYLES. I would like to read from a panel decision of the Board on that question, and I would like the committee to remember that this case is now before the circuit court of appeals on the merits on our petition for enforcement. But since it has come up, I think that it is well that it be read into the record.

This is page 2, paragraph 2, of the Board's decision.

We also agree with the trial examiner that respondents in violation of section 8 (a) (3) and (1) of the act discriminatorily discharged Watkins, Mayben, Snyder, and Jess and Ernest Runger, because of union membership and activities. Such a wholesale discharge of almost half of the shop employees coming as it did so soon after the union had succeeded in organizing practically all of the shop employees, cast serious doubts on the respondents' motives. The respondents deny that they discriminated against any employee, asserting as their principal contention that they were unaware of any union activities among their employees at the time of the discharge. The record, however, does not substantiate either their denial of knowledge of union activity—

there is a footnote there and I will read that:

It is difficult to see how the respondents could deny knowledge of union activities among their employees before the discharge of any of the employees in question in the face of their admission that on June 25, 1951, a few days before Snyder and Jess and Ernest Runger were dismissed, they had received the union's request for recognition as majority representatives of their employees.

continuing now the text of the decision—

or their denial of discriminatory motivation. As indicated above, the respondents opposed a prospective union in their shop, and even before the discharge of any employee in the group in question, resorted to the strategic announcement of the retroactive adoption of the profit-sharing plan to thwart their employees' self-organization efforts. Moreover, according to accredited testimony of employee Stimbull, the respondent Radcliffe told him on the evidence

of the discharge of Snyder and Jess and Ernest Runger that he was aware of the union meetings previously held by the employees, that Snyder was "causing the trouble" at their establishment, and that he could not operate with the union in his shop and "more guys were going to be discharged." These remarks are particularly revealing for not only do they disclose the respondents' knowledge of their employees' union activities, but also that Watkins and Mayben's earlier discharges were attributable to their union sympathies.

That is the finding of the Board on the record before it in this case. Those findings, as I indicated, are also before the court on the merits, and if we were right the court will say so, or reverse us.

Mr. SMITH. Just a minute. You are talking there about being dismissed, and the testimony here is that these men picked up their tools and left, and when they came back the next day, then he said, "You are fired."

Mr. STYLES. You have to go to the record of the hearing which is before the court upon review of the evidence in the situation.

Mr. SMITH. You have got the transcript and we have not. You have the facilities of the transcript and we do not have it.

Mr. STYLES. May I assure you that that transcript is always available to this committee, and we will be glad to let you have it.

Mr. SMITH. And you brought all of this stuff up here this morning 10 minutes before the committee met, and the regulations provide for 24 hours.

Mr. STYLES. I am sorry, sir.

Mr. SMITH. And you expect us to go through and pick those things out.

Mr. STYLES. I am sorry, sir. I supplied the committee with Chairman Herzog's statement which the committee had granted us permission to file, and I did not expect to talk on that statement, and I have not, of course.

Mr. McCABE. Mr. Styles, I do not question the statement you just read. My question is directed to the Chief Trial Examiner and to you, as spokesman for the Board. I do not urge that you answer it now. It is perfectly agreeable with the committee, I am sure, that it be answered at any time. But I do want to call attention to this passage, since Mr. Radcliffe, whom you might call the "charging party" here, has said it is the most important thing in the case.

It was that the trial examiner said, "Even if there had been no direct testimony to substantiate these findings," he would still have found as he did, because as Mr. Radcliffe puts it, the respondent lived in a small town and should know everything that is going on.

Mr. RINGER. I shall be very glad to comment on that, Mr. McCabe. The question involved there, of course, is the propriety of drawing an inference from certain testimony in the record, and in that connection, from the facts of the situation in the plant and so forth in an unfair labor practice context it has been held by the Supreme Court of the United States as being a reasonable inference to be drawn in some cases.

Now, whether or not in this particular case it was a reasonable one I would not know without studying that transcript with the greatest of care. I have not done that, of course, and that is the question that obviously is appropriate to be considered by a circuit court of appeals and will be determined, I assume, whether or not there is reasonable basis for that inference which the trial examiner drew in this particular case.

Now, I also want to point out that the trial examiner as I read it, first indicated direct evidence which bore on this question of knowledge by the company, and then gave what you have appropriately indicated is an additional reason. It says "Even if," as he worded it. Whether that is correct or not, it is not the necessary basis for his earlier indicated view and finding that there was knowledge on the part of the company from the direct evidence.

Now, it seems to me that that is important to be considered in this whole picture. Perhaps the trial examiner did not need to add that additional statement, "Even if," and he may have been incorrect in that, I do not know, under the circumstances in the particular case.

Mr. McCABE. Had you finished that point?

Mr. RINGER. I think that that covers it.

Mr. WAINWRIGHT. One of the things that I think the committee is trying to find out is whether the Board reaches determinations on anything other than direct evidence is available. I think that that is the question that is involved.

Mr. RINGER. That gets into a lawyers' discussion of what is direct evidence.

Mr. WAINWRIGHT. Assuming direct evidence in its traditional legal form, does the Board reach conclusions on other than direct evidence?

Mr. RINGER. Of course, the Board constantly, as any judge or any court, decides cases based at least partly on circumstantial evidence.

Mr. WAINWRIGHT. Would you base a decision wholly on circumstantial evidence?

Mr. RINGER. It depends on the strength of the circumstantial evidence. Many times circumstantial evidence is stronger in its totality, considering everything, than the straight out statement by some witness that a thing actually happened.

Mr. WAINWRIGHT. Even if the direct evidence was available?

Mr. RINGER. Yes.

Mr. WAINWRIGHT. Thank you. I have no further questions.

Mr. RINGER. It seems to me that the courts have many times held that and it is always a situation to be considered on the entire record whether that is justified or not.

Mr. WAINWRIGHT. Thank you.

Mr. McCABE. That is one of the points which disturbed the committee in this case, and in other cases where trial examiners have been singled out for criticism by witnesses. I wanted to give you the opportunity, if you cared to, at this point, to comment on that.

Mr. RINGER. I do not know whether I have made it clear or not, but I have attempted to.

Mr. McCABE. I will not pursue it further at this point.

Mr. HOLT. Mr. Bott, did you bring that manual that you have?

Mr. BOTT. I was going to mention it when I started.

Mr. HOLT. We might look through it.

Mr. BOTT. It is pretty big, and I do not want to look through it at this time. I have nothing particular to look at. Would you like to have it?

Mr. HOLT. If I may, sir.

Mr. BOTT. One is administrative and one is case handling.

Mr. HOLT. Thank you very much.

Mr. BARDEN. I just wanted to make this statement. Doing the best we can at explaining this language, will we not all have to agree that

this man was certainly very indiscreet in choosing his words when he used this language, and this is a man in a quasi-judicial capacity. He is passing on a verdict, to say, "Even if there was no direct evidence of the respondents knowledge of the employees union activities," and so forth, "it is reasonable to conclude" and then he says about the little town, and so forth.

Now, nobody said something about shooting the umpire this morning. If the pitcher winds up and he has been throwing three strikes in a row, and a bug flies in the umpire's eye, and the umpire hears the ball hit the mit, do you think it is all right for him to call it a strike?

Mr. RINGER. Of course, on this particular situation, I would not have worded it as the trial examiner did word it.

Mr. BARDEN. You are being as kind to him as you possibly can, and I am, too, and I just think it is horribly indiscreet language.

Mr. RINGER. I do not think it is apt language as he worded it.

Mr. McCABE. I will not intrude on your time further, Mr. Bott. Go ahead.

Mr. BOTT. I have given Congressman Barden the per curiam decision in Morehead, as requested before lunch, and I have provided the committee with a copy of the field manual, as we call it, which outlines methods and techniques in election cases and unfair labor practice cases. The manual is under revision at this time and it always is, and it is a continuing process.

Mr. HOLT. May we keep these?

Mr. BOTT. Yes, if some day you are through with them after the committee is finished with its work, will you send them back to us?

Mr. HOLT. But the committee may keep this, and it is classified, as I understand it, to a certain extent.

Mr. BOTT. It is not classified. There is nothing in there except some AEC stuff, and I would not want the public to see it, but it is the internal operating methods of an agency for our own guidance, from a personnel standpoint. If the committee will keep it in its own records, I would not care, but I would not want—

Mr. HOLT. I do not want to enter this into the record, but it is permissible to keep this within the committee.

Mr. SMITH. He said he had to have it back.

Mr. BOTT. I would like to after a reasonable time.

Mr. HOLT. How much time would you give us?

Mr. BOTT. Three, four, or five months.

Mr. SMITH. That seems reasonable.

Mr. WAINWRIGHT. Is the best evidence rule followed in your administrative proceedings?

Mr. BOTT. You are talking to me, sir?

Mr. WAINWRIGHT. Either you or the gentleman on your left.

Mr. BOTT. Mr. Ringer probably can answer faster, since he is the Chief Trial Examiner. Yes and no. We follow the rules of an equity court. If a document is available, we naturally would use the document as being the best evidence and if the document is not available, we follow the exception, and we permit secondary evidence. Of course, that I guess is not an exception. It is the best evidence rule. But based upon my experience, I will say this, and the literature is full of this problem, that we try to follow very closely the rules of Federal procedure and evidence in the Labor Board cases, and I

have not tried a case in 10 years, but I think the trial examiners generally expect us to try our cases that way. Mr. Ringer is nodding his head.

Mr. RINGER. And we so rule.

Mr. WAINWRIGHT. I have been discussing this with Mr. Metcalf who is a former judge who heard trial cases, and I think that he would concur with me that on oral testimony or on direct testimony, the testimony of the witness is certainly preferred to circumstantial evidence.

Mr. RINGER. There is no question about that whatever.

Mr. WAINWRIGHT. Then that applies to this case here, where, "Even if there was no direct evidence." In other words the implication is that circumstantial evidence would be ruling even if direct evidence could conceivably be sought out and obtained. In other words, what I am trying to find out, does the Board go out and try to get direct evidence, and if it cannot get direct evidence, then goes ahead on circumstantial evidence bases?

Mr. BOTT. I will answer that as an investigator. Yes, we try to get direct, where it is available, and statements and admissions against interest and factual events. Then you get over the borderline into circumstantial evidence. But you do not rely on that if you have got anything else, or you might put it in as cumulative evidence.

I will give you an example if you would bear with me. You might have a statement made by a supervisor in a discharge of a group of people, and an admission by him against interest, that, "Yes, we fired you because we heard the union was coming in here."

The company's defense is that (1), it did not happen, so that is a credibility question, and (2) "We had a general layoff at that time."

We put in evidence to show that the statement was made, which is a credibility question, and that of the 8 people laid off on that shift, 8 of them belonged to the union. That is a circumstantial point, a circumstantial evidence, and so if you have it you use it, and you sometimes use it to buttress your direct evidence. As a prosecutor or lawyer, you use everything you have got, subject to the tolerance of the judge, who is hearing the case.

We use some restraint on our part not to clutter up the record with too much.

Mr. RINGER. Another way of putting that is that the trial examiner is the judge in the case, and the evidence is put in by each side or more than two sides sometimes, and he takes what is furnished, if it is admissible, both direct and circumstantial evidence.

Mr. WAINWRIGHT. You have great leniency in what is admissibility, and you do not follow —

Mr. RINGER. We are subject to the rules of evidence and our cases in general insofar as practicable, that is in the Federal rules.

Mr. WAINWRIGHT. I thought you were a little closer to hearings before a master, in which he has a great deal of discretion as to the amount of evidence that he would entertain. I gather from you just now that that is not so.

Mr. RINGER. Well, of course it is not the same as a jury case, and it is within the permissible rules under the Federal procedure to introduce the evidence that is admissible in equity cases.

Mr. WAINWRIGHT. I am through, Mr. Smith.

Mr. McCABE. Mr. Ringer, are you not saying in substance that this charge by Mr Radcliffe is correct—the one which he singles out as the most important one in the case? Aside from the best evidence rule and circumstantial evidence, this examiner says that even if there were no direct evidence, assuming that all he had in this case was the fact that several meetings were held, he would nevertheless hold Radcliffe guilty because he should have known, since he lived in a small town, and in this small town everybody is presumed to know what everyone else is doing.

That, I think, is the real point. We have drifted back here to what disturbed the committee most at the beginning. Regardless of other evidence he might have had, he would still say this—assuming there was nothing else.

Mr. RINGER. If there was nothing else in the case, and this is only with reference to the one point of knowledge on the part of the respondent of the union activity in the plant.

Mr. McCABE. He is making the finding on that one point only at this time.

Mr. RINGER. That is on that one particular point. There would have to be other things there to base any unfair labor practice findings on with respect to any of the issues involved in the case.

Mr. McCABE. That is very true. This is not the total case.

Mr. RINGER. So the only question here would be, and it is a hypothetical one since there was other evidence in the case apparently, what he would properly find with respect to knowledge on the part of the respondent if there had been no other evidence than that which was in the case with respect to the smallness of the plant and the evidence of what was taking place.

Now, whether that would be justifiable or not would be a legal question which the Supreme Court has held in a number of cases including the Link Belt case, that that inference may be drawn in some circumstances.

Mr. McCABE. Then do you want to go back to your earlier statement that you think this particular inference on this specific point was an improper one to draw?

Mr. RINGER. I do not know without reading the record in the case. It would depend on what was shown there about the close relationship between the employers and the people working in that plant, the weight that would be given to the fact that as I recall from this morning's discussion that there were 11 employees there, and that there may have been, and I do not know whether there was or not, a close social and family feeling among the people in the plant. I do not know.

Mr. McCABE. Then do you say this could be a proper inference to draw?

Mr. RINGER. Yes; and the Supreme Court has so held in a number of cases in which the point of knowledge on the part of the company depended on that sort of evidence. But it was unnecessary in this particular case because he had just before this comment in this particular paragraph indicated the direct evidence bearing on knowledge.

Mr. McCABE. I realize all of that. I merely wanted to pinpoint this thing which disturbed the committee—the finding that the man was guilty, in the absence of direct testimony, simply and solely because he lived in this community where everyone was supposed to

know everyone else's business. That is all the passage says, and I do not want to go beyond that.

Mr. RINGER. May I add this only, that it seems to me that considering that Homedale case, it would not be the most important point in the case.

Mr. McCABE. I do not raise that as such.

Mr. RINGER. Because it is an additional point that the trial examiner himself put an "if" to that because he had already pointed out the direct evidence supporting the knowledge.

Mr. McCABE. I think we have gone over that point sufficiently, but let me just read the following sentence to put Mr. Radcliffe's words in the proper context since he made the charge here.

He goes on after his quotation:

In other words, there is no evidence to support the charges, but you live in a small town and in a small town everybody knows everybody else's business, and you must have been aware of the meeting somehow.

Gentlemen, to me that is probably the most serious thing in the entire case, that the Government can find you guilty on such flimsy charge. I understand from my attorney that this practice of making findings not supported by evidence was supposed to have been corrected by the amendment contained in subparagraph (f), section 10 of the Labor-Management Relations Act of 1947. I understand that the amendment provides that all conclusions and findings by the examiners must be supported by substantial evidence in the record, notwithstanding the examiner in this case with the approval of the Board as substantiated by the second verdict chose to completely ignore the 1947 amendment to the act.

That is the end of the quotation.

Mr. RINGER. Do you wish me to comment on it?

Mr. McCABE. If you care to.

Mr. RINGER. All I want to say on that, attempting to be completely objective, is that the intermediate report decision on that point of knowledge does not depend on what Mr. Radcliffe seems to assume was the only basis for it, because there was direct evidence. So that decision both by the trial examiner in his intermediate report, and the Board in its decision and order, had as a basis the direct evidence in the particular case.

Mr. McCABE. I realize that, and I will not belabor the issue further. But I did want to get to the point of the propriety of this finding, standing alone, on this single point.

Mr. WAINWRIGHT. Was there direct evidence from any one other than the complaining witness or one of the complaining witnesses?

Mr. RINGER. I have not read the transcript, as I indicated before, but the intermediate report so indicates because it is discussed.

Mr. WAINWRIGHT. It indicates there was direct testimony from other than complaining witnesses?

Mr. RINGER. Yes, and it is discussed immediately before the trial examiner wanders off into the "if" paragraph and said, "Even if there was not this that I have been discussing, I think the finding on knowledge would be supportable in this case."

Mr. SMITH. What do you say about this statement:

This testimony (speaking of Radcliffe) is not credited. The demeanor of Radcliffe and Mancke while they were on the witness stand evidenced to the undersigned that they were withholding the true facts regarding the controversy.

By their demeanor, this Solomon, this trial examiner says they are just lying. That is by their demeanor. What do you say about that, as a judicial statement?

Mr. RINGER. Well, of course, in the courts regularly every day judges are deciding credibility as between different witnesses, and it is inevitable that it has to be done, because one person will say one thing, and the witness on the other side will say the exact contrary.

Mr. SMITH. He does not say anything about credibility. He said "demeanor."

Mr. RINGER. Well, demeanor is one of the elements determining credibility on the part of the man who has to decide a case. It cannot be the sole and exclusive basis, but it is an element to be considered, and we do it all of the time, and every judge does it, because he has to.

Mr. WAINWRIGHT. I think most judges might tend to disagree with you, or at least that they would publicly state that because a man looks like a liar, therefore, he must necessarily be a liar. I do not go along with your statement, and the use of the expression "demeanor" means that his appearance and actions on the stand indicated that he was shifty or not a correct witness.

Now, it would not be a good judge who would base the credibility of a witness on that, I am sure you agree.

Mr. RINGER. Well, of course, you never get a case that does not have other elements in it that bear on the appraisal of the witnesses on one side or the other. I do not think very often there is a case where one man says one thing, and another says the opposite, and you have no other basis than to look at them and see which one you think is telling the truth. It would be an almost impossible determination to make in that instance that I am giving you of nothing else to base it on and under those circumstances a fairminded judge would say, "I can not tell", and so I will dismiss the case. Because if you cannot tell from the content of it, or the content of the testimony plus the appearance and demeanor, shiftiness, evasion and so forth, on some or other of the two witnesses, he then says the General Counsel who has the burden of proof has not sustained it.

Mr. WAINWRIGHT. I still think that basically, however, you agree with General Smith's statement that it is incorrect to arrive at a decision on the basis of demeanor. That is all that General Smith is trying to point out, and I think that you should agree.

Mr. RINGER. Well, I do not think that this case would be one where there was not anything else.

Mr. WAINWRIGHT. Let us leave the other facts alone, and stay with the point that Mr. Smith brought up, this question of demeanor. All he asked was should the demeanor of the witness be a deciding factor, and I think from your statement I gather you agree that that should not be a deciding factor.

Mr. RINGER. I will agree that ordinarily it would not be the deciding factor.

Mr. WAINWRIGHT. All right. I have no further questions.

Chairman McCONNELL. You mean you do not like his looks and so you are going to rule against him.

Mr. RINGER. That would be a violation of the oath of anyone put to deciding cases.

Chairman McCONNELL. I do not like this demeanor idea. It is the part of this case that struck me when I heard it and I did not like those statements, that I—the trial examiner—"do not like the witness's appearance or demeanor, and even if there were no evidence he

knew, I would conclude he did because it is a small town and so forth." There is nothing judicial about that type of action or statement.

Mr. LANDRUM. You are Mr. Ringer, are you?

Mr. RINGER. Yes.

Mr. LANDRUM. I do not want to belabor this thing too far but go back to what Mr. McCabe said here now, and strip this record of the Homedale case, the original trial examiner's hearing, of all of the evidence about this knowledge of union activity, and all the direct evidence that you say was in the record, and come down to this point that Mr. McCabe has brought out where he says, "Even if I did not have all of this direct evidence I would still find him guilty or find that he had knowledge of union activity because of the size of the town", now as I gather it, that is the essence of what Mr. Caba is talking about.

Mr. McCABE. That is the point to which I sought an answer.

Mr. LANDRUM. That is the very thing that Mr. Radcliffe is talking about. Your trial examiner has said that even if he did not have all of this direct testimony, that in spite of that the mercies of the town and the fact that everybody in the small town knows everybody else's business, "I would with that fact alone hold him guilty of having knowledge of this."

Now, that is what your trial examiner said and all of your theorizing does not get around that. I want to ask you this question: Would you, presiding as a judge or a trial examiner, employ that theory in determining whether a witness before you had knowledge of union activity or not have knowledge?

Mr. RINGER. Of course I would want to know——

Mr. LANDRUM. Yes or no. I am talking about on that fact alone, and we will strip it of all of its window dressing, and you do not have any direct testimony in there, and you just are in a small town, and the man is charged with having knowledge of labor activities, and you do not have any of this other. Now, with that fact alone, would you hold him with having knowledge of it?

Mr. RINGER. Frankly I do not know.

Mr. LANDRUM. All right. That is all I want to know.

Mr. RINGER. You do not want me to explain?

Mr. LANDRUM. No, sir. That does not need an explanation.

Mr. RINGER. I will stand on that. Under those circumstances.

Chairman McCONNELL. All right. Let us move on then to the other case.

Mr. BOTT. I gave——

Mr. SMITH. I just want the record to show that these members here of the Board and all of their numerous attorneys and people that are here in the room, they may think they have heard the last of the Homedale case, but as one individual of this committee, they have not.

Chairman McCONNELL. Proceed.

Mr. BOTT. The last case I was to take up was the Gilbert Co. from the 20th region.

Mr. BARDEN. Did you mean to pass over the Morehead City case?

Mr. BOTT. I can take this one in preference to this.

Chairman McCONNELL. Will you go on to Morehead now?

Mr. BOTT. In Morehead, as I recall it, and I guess I recall it pretty vividly from 2 months ago, 1 of the complaints was that the attorney

who was responsible for the case, Mr. Miles J. McCormick, an employee under my supervision, in investigating the case, preliminary to holding 1 of these election hearings, that is a representation case, not an adversary proceeding and not an unfair labor practice case; said to an employee of the company, "Will you come down to the court house or do I have to drag you down?"

I have heard Mr. McCormick's story of how the case developed, and I can outline that, and Mr. McCormick will write a letter to this committee, because it was his conduct which was assailed.

I can say generally that the story that I have of it and our records show a long continuous detailed attempt to get some representative of the company to come to this election hearing, this representation case, to testify with respect to whether or not the company was engaged in interstate commerce. It is a mill, and we had to have evidence in the record before an election could be directed, and we have to have some evidence either from the company or from some other source, that they are in interstate commerce.

I have it outlined in detail here, and each one of you has a statement of how McCormick went to town and looked for company officers and people, and they were not available and he had many letters back and forth from his office, and from the company's office, and finally he got one individual at the company plant who was the only individual present in the office, and he asked him if he would come to the hearing and served a subpoena on him and he did come to the hearing, but he did not testify because he said he did not have any knowledge of the company's operations.

I have to say that Mr. McCormick says that he did not say, "Do I have to drag you down," and he said, "Shall I subpoena you or will you come down?" The question is whether he used the word "drag". I hope not; I have to say, I think not; but it is a matter of which person you talk to.

Now, I can read this day by day account of the letters and the contacts, but the whole thing was about his attempt to get a witness, an adverse witness in a sense, to come to the hearing and to tell us whether or not the company was engaged in interstate commerce. As I recall, that is the case.

Mr. BARDEN. Well, now, Mr. Bott, what is a hearing officer?

Mr. BOTT. A hearing officer is the man who presides over a representation case, a nonadversary proceeding under the Administrative Procedures Act. He is not a trial examiner, and he is not under the jurisdiction of the trial examiners. He is an employee of a regional office, and he might be a field examiner or he might be an attorney, but when we have the hearing as to whether or not we are going to have an election, we make the record on the eligibility and the unit and the commerce. He monitors or controls that hearing to see that an adequate record is made.

Mr. BARDEN. He serves as the judge, in other words?

Mr. BOTT. In a sense he does, but I am speaking as a lawyer now, Congressman. He is not a judge. He is not a trial examiner. Those hearings are nonadversary, and he monitors or controls it.

Mr. BARDEN. Does he have the authority to issue subpoenas?

Mr. BOTT. He issues subpoenas on behalf of the Board, under the rules and regulations.

Mr. BARDEN. And he has a right to pass on which evidence shall go into the record?

Mr. BOTT. Yes.

Mr. BARDEN. And that evidence is what the Board determines its findings on?

Mr. BOTT. Yes.

Mr. BARDEN. Then he is in truth and in fact the hearing officer, and for the purpose of that court he is the judge.

Mr. BOTT. But he makes no decision.

Mr. BARDEN. He decides who he shall hear.

Mr. BOTT. He decides what witnesses—the parties offer whatever witnesses they want to on the question of representation.

Mr. BARDEN. Suppose one side does not want to offer any witnesses.

Mr. BOTT. He calls witnesses, and he could call them to see that a full record is made.

Mr. BARDEN. He can stop a witness when he wants to and tell him what is proper and improper to go into the record?

Mr. BOTT. Yes, sir.

Mr. BARDEN. And he is supposed to be for the purpose of conducting that hearing an impartial hearing officer.

Mr. BOTT. That is right.

Mr. BARDEN. Is that correct?

Mr. BOTT. Absolutely.

Mr. BARDEN. Well, now, I notice in your statement here the thing that attracted me, you said:

Mr. Barden stated that McCormick was alleged to have behaved improperly while attempting to secure evidence from the company. I have investigated the entire handling of the case meticulously and the facts as I have found them are set forth below.

Now, I presume that you intended to set forth all of the facts that had bearing on this and not take anything from context, but present the picture?

Mr. BOTT. I hope so. I hope that is what it is.

Mr. BARDEN. Now, the facts as you set them forth are along narration of the difficulties experienced by Mr. McCormick in getting this Morehead City Garment Co., Inc., official to give him the information he wanted, and to be where he wanted them when he wanted to talk to them.

Mr. BOTT. That is right.

Mr. BARDEN. And he had some difficulty in doing that.

Mr. BOTT. That is right, sir.

Mr. BARDEN. I notice you did not mention in your statement that he even talked to Mrs. Jackson.

Mr. BOTT. I mentioned everything I knew and everything that was brought to me officially.

Mr. BARDEN. Well, you will recall that I specifically asked you about that in the hearings.

Mr. BOTT. I do not recall it.

Mr. BARDEN. In which I said this, and I was addressing this to you:

A person who is now in the employ of your office, I understand, if you are responsible for this, walked in and made a statement like this:

"Mr. McCormick asked if I had not had sufficient time to get the information and I replied 'No, we have been too busy to get everybody together,' and so forth.

Then Mr. McCormick made the statement that, "You had better get the data and get it damn fast."

Now, I made that statement to you and quoted it verbatim, and you say you have investigated this case meticulously, and you find nothing wrong.

Now, do you think that is proper language for one of your officials to walk into a lady's office and give her?

Mr. BOTT. Mr. McCormick denies that he made that remark to Mrs. Jackson.

Mr. BARDEN. Now let us see about the credibility of certain statements and just how impartial some folks are.

I do not like to clutter up the record with a lot of detailed statements, but you say you do not think there was any misconduct, and that you have investigated and given it the O. K.

Mr. BOTT. I give you this as our side of the story and I have to O. K. it.

Mr. BARDEN. And you said this morning that you must admit that in your opinion virtually all of these people who filed complaints are disgruntled over losing an action.

Mr. BOTT. I said that part of the criticism or a substantial part of it, in my opinion, is based upon the fact that they were disgruntled litigants.

Mr. BARDEN. And when Mr. McCormick walked in, you know people make their own reputations, and the Board's reputation had preceded it. So they simply put a stenographer on guard, and she took down every word of the conversation and here it is:

Mr. McCormick walks in and he said: "My name is McCormick, representative of the United States Government, and I would like to see Mr. Dill."

Mr. Dill is in South Carolina

Uh-hum. I would like to see Mrs. Jackson.

She isn't here.

Where is she?

She is out of town.

Where?

I do not know.

Doesn't she usually leave word where she is going?

Sometimes she does and sometimes she does not.

Who is in charge of the plant at this time?

I do not know of anyone being in absolute authority.

Are you in charge?

No, only the office.

Would you like to come down to the city hall and testify?

No.

Would I have to drag you down?

Yes.

Can I use your telephone?

Yes

He placed a call and said, "Does Mrs. Jackson own the plant?"

The man that he was talking to after he had placed the call said, "That is not for me to say."

Who do you people think you are down here that you think that you can buck the United States Government. If we have to, we will make it tough on you.

Are you the Government or do you work for the government? You aren't the President of it, are you?

No, I work for it.

Well, I am not the president of the place either.

Then here is the telephone conversation when he answered it:

Hello, Doc.

Mr. BOTT. He is the regional director in Baltimore, who at that time was over McCormick.

Mr. BARDEN. All right.

Hello, Doc. I just wanted to say this. Isn't it unusual that none of the officials show up? They are pretty nasty, and I am pretty mad, you know. Well, now, it is unusual, but to be expected at times. Who do you say was there in the office

Some guy I don't know what he is. Bookkeeper or something. He is sitting over here punching a machine, and does not pay any attention to me. They will probably get in touch with their lawyer, if they have one, as soon as I leave here.

Okay, go ahead with the hearing. Postpone it until Monday, and go over to the beach and enjoy yourself. You are going to stay over the weekend, aren't you?

Yes. I don't see how I can do anything else. Okay. Then I will see you and I will eat a big fish supper for you.

Now, here is the other call to Baltimore, I believe. Who is Miles?

Mr. BOTT. That is the individual we are talking about, McCormick.

Mr. BARDEN. All right. This is the way that starts out:

How are you, Miles.

Fine, thank you. I want you to issue a subpoena.

That is the subpoena you are talking about?

Mr. BOTT. Yes.

Mr. BARDEN. And you referred to it in here that he called Baltimore, and so this is the Baltimore call that you referred to. [Reading:]

I wanted to issue a subpoena, but I don't want it thrown back in my face, which is just what is going to happen unless I have something to back it up with.

Okay. Well, now, let's see. You will have to get one from the district court. What do you need with a subpoena.

Well, here I am, ready to have a hearing, and nobody shows up. I am talking over the company's telephone, and all the information I can get is that Mrs. Jackson is out of town and no one knows where she is. All the officials left town at their own convenience, for parts unknown, and the date of their return is unknown. You know how these things are with companies like that.

Well, I see now you don't want to serve this man in the office.

I don't know. The union organizer can tell me what the story is. Well, these are problems that we run into. What do I do now?

Well, the only thing I see to do is to get these subpoenas fixed up so they will stick. Go ahead and hold your hearing today and get all of the evidence against them you can, and all the worthwhile evidence you can. That will help us a lot. Get any of the employees to testify. They can be subpoenaed too.

Okay. Now I will go ahead with the hearing, and then continue it until Monday. Maybe by that time we can get up with them.

Yes; that is the best thing to do, and under the circumstances the only thing they did not ask for a postponement. Didn't they write you or something?

No; they didn't.

I can't get any commerce information. They won't back without a fight. They are this kind of an outfit. The only thing I can get is they do contract work, all of their stuff is shipped in and finished here, and they wrote on the bottom of that form we sent them, "We do all contract work," and there is a parenthesis and the stenographer said "And he said something about Macon, Ga." I could not understand it.

I will need more records than that for my commerce report.

Well, I will get to work on the subpoena from the district court. That is what they want, is a court fight. I will get Doc on them right away. Now give me the names.

Edna Jackson, L. D. Deal.

Well, Miles, I would suggest that you open the hearing today, and as I said, get all of the evidence you can on record today. I would then adjourn until Monday, and then call us Monday morning. You can squeeze some of the employees that know what is going on.

Yes (the stenographer said that must be some kind of code they use as 1 or 2 things were said I could not get).

Mr. BOTT. We do not have a code. She did not hear that part.

Mr. BARDEN. That little girl, she did not know what the term "squeeze" meant, did she?

Mr. BOTT. Congressman, all I can do is agree with Doc, who is a regional director, who said, "Those are the kind of problems we run into." The sensible thing here to do was to have a stipulation and agreement as to whether or not this company was subject to the jurisdiction of the Board. It is a mill, as I recall.

Mr. BARDEN. Now, before we get to that, would you still say that a man that would carry on that kind of a conversation about people whose rights he is to pass upon, and stand in position of judgment, would be a proper conversation?

Mr. BOTT. Absolutely. This was a representation case, all the man was trying to do was to get somebody to send a witness over and say whether or not their figures showed that they were in commerce or not.

Mr. BARDEN. And you think it is perfectly all right for him to walk into the office and tell a lady that she had better get the information and get it damn fast?

Mr. BOTT. No; I do not, and I said I did not approve of that before, and I do not approve it now. I do not know whether he said that or not and I think he denies it.

Mr. BARDEN. You do not think he would admit this, do you?

Mr. BOTT. Well, I can read his version of it.

Mr. BARDEN. I have read his version.

Mr. BOTT. Maybe we ought to have it in the record.

Mr. BARDEN. It is in the record.

Mr. BOTT. They tell me it is not, Congressman.

Mr. BARDEN. I would like to—

Mr. BOTT. I would like to read McCormick's version of it. That is not in the record.

Chairman McCONNELL. Put it in the record.

Mr. BARDEN. Read anything you want to.

Mr. BOTT. Perhaps we could put this statement on Morehead Cotton in the record.

Mr. BARDEN. I do not care what you put in the record, I am concerned with this: Here is what I am concerned with, and let us not lose sight of it. I told you that in my opinion the conduct of your men down there was improper and you came back and your statement, you said you had meticulously inspected and investigated it, and that it was okay.

Now I still am not through with showing the impropriety, but you put in anything you want to.

Chairman McCONNELL. I think it would be satisfactory and proper to put in McCormick's statement. He is the one mentioned.

Mr. BOTT. On that part.

Chairman McCONNELL. It might be well to identify him.

Mr. BOTT. Miles McCormick is a lawyer who works under my supervision and now works out of Winston-Salem office. At the time of these occurrences, the Winston-Salem office was a subregional office under the jurisdiction of the Baltimore office. The individuals mentioned, "Doc," there was Mr. Penello, the regional director, whose nickname is "Doc," and the other man he was talking to, I would believe, or I would guess was the regional attorney in Baltimore, his immediate superior.

McCormick's story about the visit to the plant is this:

Mr. ELLIOTT. What page is that on?

Mr. BOTT. Page 4 of my prepared statement:

Miles McCormick (a native of South Carolina and a graduate of the University of North Carolina Law School) had been designated hearing officer, and in that capacity appeared at the city hall, Morehead City on August 26 at the appointed time. No company representative appeared. After waiting for almost an hour McCormick telephoned David C. Sachs, chief law officer in Baltimore, Md., and discussed with him the problem of obtaining sufficient commercial information to enable the Board to decide the matter of jurisdiction. Sachs advised McCormick to go to the plant and see if the notice of hearing had been properly delivered and if the company intended to appear. McCormick then adjourned the hearing to reconvene at 3:00 p. m.

McCormick then visited the company's plant. The following is his account of what transpired on that visit:

I visited the company's plant which was only a short distance from the city hall, on an off chance that Hooper, who had signed the return receipt of the affidavit of service of the notice of hearing, had failed to notify the proper parties. When I went into the company's office there was only one person present that I could see. I introduced myself to him as Miles McCormick, a representative of the National Labor Relations Board from Winston-Salem, and asked to see Mrs. Jackson. The person to whom I introduced myself did not give me his name at the time. He said that Mrs. Jackson was not there. I asked where she was and he said out of town. I then asked if she had been in the office or the plant that day and he said that she had not. I asked if she did not leave word where she could be reached in the event of an emergency and he replied that she had not. I asked if Mrs. Jackson had received the notice of hearing and he said she had. I inquired why no one from the company was present at the hearing. Referring to the notice of hearing, he said, "Well, it didn't say we had to be there, did it?"

I then asked if I could talk with Mr. L. D. Dill, whom, from my inspection of the C-case file, I know to be the superintendent of the plant. The person to whom I was speaking told me that Mr. Dill was in Fort Jackson, S. C. on Army maneuvers. I then asked who was in charge of the plant and he said that nobody was. I then said, "You don't mean to tell me that a plant this size is completely without management." He replied that it was. I then asked the person to whom I was speaking what his name was and he said, "Peter Hooper." I asked him what his title was and he said "office manager." I then asked him if he would come down to the city hall at 3 p. m., and testify so the National Labor Relations Board could get some information about the operations of the company's business. He said he would not. I asked Hooper if I should be forced to subpoena him and he said he guessed I would.

Mr. BARDEN. Right at that point, do you know he was not doing a bad job of remembering, except he did not remember it like the stenographer took it down.

Mr. BOTT. Well——

Mr. BARDEN. He said everything nice there, but it did not sound like the stenographer took it.

Mr. BOTT. Did the stenographer take it down at the time he was talking?

Mr. BARDEN. Right at the time he was talking.

Mr. BOTT. She was in another room?

Mr. BARDEN. She was sitting right over there taking it, and that was her instructions.

Mr. BOTT. To take it down?

Mr. BARDEN. That is not all she took down either.

Mr. BOTT. Well, this is our report, and that is the company's employee's report. That is all I can say.

Mr. BARDEN. You know, Mr. Bott, here is something that worries me about this. This is getting a little closer to home. I want to read you this, and this is yours. [Reading:]

You say on October 29, 1951, the Circuit Court of Appeals for the Fourth Circuit entered its decree modifying and enforcing the order of the Board. The court did not modify any of the Board's findings concerning interference, restraint, and coercion, surveillance of the union meeting, threats to move the plant, interrogation of employees concerning their union, sympathies, and threats to discharge employees in violation of the act.

The court's decree required the company to offer immediate and full reinstatement to two individuals, cease and desist from the above mentioned interference with self-organization activities of the employees, make whole the two employees. It was ordered to reinstate, and post in and about its plant a notice assuring its employees that it would take the action directed.

Now, that sounds like a full concurrence by the circuit court of appeals with the Board, does it not?

Mr. BOTT. I think you could get that impression.

Mr. BARDEN. I think so, and I think that that is the reason it was written that way, if you want me to be perfectly frank with you.

Now, I want to read you what the circuit court's opinion was. This is the circuit court's opinion:

This is a petition for enforcement of an order of the National Labor Relations Board finding respondent guilty of unfair labor practice and ordering it to cease and desist therefrom; to reinstate with pay five employees found to have been discriminatorily discharged, and to offer employment to one to whom it was found that employment had been discriminatorily refused.

Respondent asked that the order be set aside on the ground that it is not supported by substantial evidence. The evidence is analyzed in the report of the trial examiner, and we need not go into it here. It is sufficient to say that with respect to the unfair labor practice upon which the cease and desist order is based, and with respect to the discriminatory discharges of Sally Smith and Louise Miller, we think that the Board's finding and order are supported by substantial evidence, and that to the alleged discriminatory discharges of Pauline Miller, Margaret Roop, and Bessie Robinson, and the alleged discriminatory refusal to employ Minnie Katherine Pinner, we do not think that there is substantial evidence in the record considered as a whole to support the Board's findings. To this extent, the order should be modified.

The order of the Board will accordingly be modified by eliminating therefrom those portions of the findings and order relating to Pauline Miller, Margaret Roop, Bessie Robinson, Minnie Katherine Pinner, and so modified it will be enforced.

Mr. BOTT. We won half of the case. We won two of the discharges and we lost four and we won the broad 8 (1) interference. If I was writing that, I would have put in about the four we did not win. I did not have a chance to edit this last night and I just want to say that.

Mr. BARDEN. I am still forced to my statement that whoever wrote that intended to convey the very impression you and I got when we heard it read, which was at best a half-truth.

Mr. BOTT. We won the case, and we had to file.

Mr. BARDEN. There was probably \$10,000 or \$15,000 difference.

Mr. BOTT. I would not doubt that. I would not be surprised if it is probably true.

Mr. BARDEN. Well, now, then, do you think that your man had trouble in finding folks if these folks say they had trouble getting rid of your folks?

Mr. BOTT. I can believe that.

Mr. BARDEN. I can believe it, too.

Now, I requested a report which my distinguished friend, Mr. William O. Murdock, furnished, and I want to read you the record of that little company down there, in addition to having to spend \$17,000 or \$18,000 to keep from paying about \$20,000 that you had improperly found them to be due.

Mr. BORT. Mr. Murdock is under my supervision in the Washington office.

Mr. BARDEN. That is all right. He gave me all of the information that he had, which wasn't all of it.

Now, beginning on June 20, 1949, here is a little company down there where the husband was the manager, and he died, and this widow lady was left to manage it and look after it.

Here is the beginning of it:

June 20, 1949: Representation petition for production and maintenance unit, case No. 34-RC-150, filed by Amalgamated Clothing Workers of America, CIO.

July 7, 1949: Original charge of unfair labor practices, case No. 34-CA-143, by Amalgamated Clothing Workers of America, CIO, alleging intimidation, interference and coercion of employees.

August 26, 1949-August 29, 1949: Hearing in case No. 34-RC-150 held in Morehead City, N. C., Miles J. McCormick, hearing officer.

September 30, 1949: Board issued its decision and directed that an election be held among the employees involved in case No. 34-RC-150.

October 17, 1949: Election in case No. 34-RC-150. Union lost.

October 18, 1949: Union filed objections to election.

October 21, 1949: Union amended its original unfair labor practice charge in case No. 34-CA-143 by adding to charge that five employees had been discriminatorily discharged.

February 28, 1950: Date of regional director's report on challenges and objections. Regional director recommended that 17 challenges be sustained and hearing held on objections which would be consolidated with hearing in case No. 34-CA-143.

March 21, 1950: Union again amended its original charge by supplementing the charges of coercion and by making additional allegations of discriminatory discharges.

April 12, 1950: Board ordered hearing on objections in case No. 34-RC-150 and authorized consolidation with hearing in case No. 34-CA-143.

April 19, 1950: The union again amended its unfair labor practice charges by amplifying its previous charges.

May 15, 1950: The regional director issued a complaint alleging that the company violated the law by interfering with employees and by discriminatorily discharging seven employees.

May 15, 1950: Regional director issued order consolidating cases and notice of hearing. Hearing set for June 13, 1950.

May 25, 1950: Regional director issued order postponing hearing from June 13, 1950, to June 26, 1950.

June 8, 1950: Regional director issued amended complaint adding the names of two persons alleged to be discriminatorily discharged.

June 8, 1950: Regional director issued amended notice of hearing and change in place of hearing. Date of hearing changed from June 13, 1950, to June 26, 1950, and place of hearing changed to Beaufort, N. C.

June 26, 1950, to July 3, 1950, inclusive: Hearing held in Beaufort, N. C.

December 21, 1950: Trial examiner issued his intermediate report recommending that the company post a notice that there will be no further interference with the employees and that eight former employees be reinstated with back pay. One of the dismissed employees was not recommended for reinstatement. The trial examiner recommended that the election be set aside.

May 3, 1951: The Board issued its decision ordering the company to cease unlawful interference with its employees and reinstate 5 employees with back pay; back pay without reinstatement ordered for 1 other employee. The election was set aside and the Board said that—

When the regional director advises * * * that circumstances permit a free choice of representatives, we shall direct that a new election be held among the [company's] employees.

August 15, 1951: Because of the refusal of company to comply with the Board's order, a petition for enforcement was filed in the Court of Appeals for the Fourth Circuit.

October 17, 1951: *N. L. R. B. v. Morehead City Garment Company, Inc.*, argued in Richmond, Va.

October 29, 1951: The court enforced the Board's order. Per curiam decision.

From November 1951 to June 30, 1952: Regional office attempted in vain to get compliance with the circuit court decree.

June 30, 1952: Winthrop Johns, in charge of the General Counsel's Contempt and Injunction Litigation Branch, set a deadline for the company to comply with the court decree, or else the General Counsel would be forced to institute civil and criminal contempt proceedings.

July 1, 1952: Company complied with court decree.

July 29, 1952: Notice of back-pay hearing issued since regional office had been unable to obtain agreement on the amount due.

September 3, 1952-July 29, 1953: Notice withdrawn in view of pending resolution of back-pay problem.

October 22, 1952: Case No. 34-CA-143 closed. Back pay totaled \$3,911.63.

November 25, 1952: Union filed case No. 11-CA-533 alleging discriminatory refusal to hire. Regional director considering impact on holding of new election in case No. 34-RC-150, which had not been possible until company complied with Board's order in case No. 34-CA-143 and court decree.

January 22, 1953, mid-March 1953: Regional director concluded the new charge, case No. 11-CA-533, would not affect the free choice of the employees and that a new election in case No. 34-RC-150 could be conducted. Various conferences with union and company representatives.

March 16, 1953: Regional director, in accordance with Board's directive of May 3, 1951, advised Board that company had finally complied with Board's order and that, pursuant thereto, the atmosphere had sufficiently cleared so that a free election could be directed. He recommended that Board issue a supplemental order directing a new election.

March 20, 1953: Board issued direction of second election.

April 2, 1953: Second election in case No. 34-RC-150 conducted based on payroll for period ending March 13, 1953. Of 325 eligible voters, 309 cast voted: 91 for the union; 218 against; 19 challenged ballots and 1 void. Union lost election, 218 to 91.

April 10, 1953: No objections having been filed by either party during the prescribed period, certification of results of election was issued and case No. 34-RC-150 closed.

Now, that was given to me with this letter from Mr. William O. Murdock, addressed to Mr. Derrickson, that:

In accordance with your recent request, I am attaching a chronological summary of the above-entitled cases. You will note that cases Nos. 34-RC-150 and 34-CA-143 are now closed, and that the investigation in case No. 11-CA-533 is still pending. The change in case numbers is explained by the fact that Winston-Salem, formerly our 34th subregional office, became our 11th region in October, 1952.

if they had been able to think up anything else to worry these good people, when it was generally understood and I understood it was the policy of your Board that no election would be held as long as charges were outstanding against a company.

Mr. BOTT. You can waive them. The union can agree to let the election be held and not to object to the election based upon the charges that were pending.

Mr. BARDEN. Evidently they did that, and when they agreed to it they called them up, I think, one week and told them they were going to hold the election the next Tuesday.

But now, are there not two parties involved in that case?

Mr. BOTT. Yes.

Mr. BARDEN. Why is it, as long as the union agrees to it, it is all right whatever is done?

Mr. BOTT. I am sorry. If I understood your question, why wasn't the company consulted with respect to the date of the election?

Mr. BARDEN. I mean with respect to the waiver of these charges.

Mr. BOTT. It is up to the charging party. The petitioner who wants an election can file for an election, and file a petition; and sometimes unfair labor practices occur while that case is being processed. If we go through with the case, the election, the union would be able to object to the election because of the interference. We do not want them to do both things, so we ask them that "If you want us to handle your election case, you agree in advance to waive the unfair labor practices," and we do not ask the company whether they are willing to waive their own unfair labor practices if they did commit them.

Mr. BARDEN. When the matter becomes a controversy, then, do you not think that just ordinary consideration would require that both parties be consulted about waiving that?

Mr. BOTT. Not as to the waiver.

Mr. BARDEN. You have had some practice in courts, have you not?

Mr. BOTT. Yes, sir.

Mr. BARDEN. Well, you do not get many things done by a judge unless both parties know about it, do you?

Mr. BOTT. That is right, but it is not the same situation.

Mr. BARDEN. We are going to try to make it the same situation before we get through with it.

Here this charge was filed in November of 1952, and I recounted all of these activities that took place between November 25, 1952, and April 10, 1953. They had them investigated, and they wanted to dis-

cuss collateral issues, and they have not settled this. And in these charges, some of the very people are named in the charges that are made against them that the circuit court of appeals said were very properly discharged.

Mr. BOTT. It is possible. I do not know what is in the new case.

Mr. BARDEN. How long must people submit to this kind of treatment?

Mr. BOTT. These are new charges filed, alleging unfair labor practices against the company which was found to have committed unfair labor practices by the Fourth Circuit Court of Appeals, a United States court.

Now, we are investigating the new charges, too, and maybe we will find that they are guilty of those.

Mr. BARDEN. I do not think that you are investigating a thing, and your investigating officer down there, Mr. McCormick, went down there and said, Well, they would talk about it; and then wanted to talk about something else. They have been there a dozen times since, and they are not concerned with investigating that until they can get some advantage by doing it.

They have had more than just this trouble. I think that you have a man down there by the name of Frahm—

Mr. BOTT. Richard Frahm.

Mr. BARDEN. I think he is down there. All right, during this trouble you talk about going around with one party or the other. That is putting it mildly. Everybody knows all about that.

I can appreciate your wanting to protect them to some extent. There was a carload of these employees coming to the plant, and there was one colored girl who was pretty noisy about being opposed to the union. So on one dark night, up drives two men. One of them was the union organizer, and the other your man. We found that out later. He went in there and he told her about those statements that she was making, the union organizer did, and said, "Don't you know that you are violating the Federal law?"

And of course, he about scared her to death, and when he got to that point he turned to this other man and said, "You don't know who I have here with me. This is a United States Government representative, a Federal representative here."

Then he wrote down what she had said, and tried to get her to sign it. She asked him to let her read it, and he wouldn't let her read it, and she wouldn't sign it. And she never knew who he was until they held this last election. When the Government representative showed up there, she pointed him out and said, "That is the man that came out. I don't know who the union representative was, but that is the man that came out."

Now, you can take all of this, Mr. Bott, and put it together, and put in the activities of Mr. McCormick, who was anything in the world but a disinterested party—a disinterested judge would not have gone running around in boats over to islands, to homes and to cottages, asking employees about these things. That is in the statement that you filed here today. Why should he be running around? That is not his job, is it?

Mr. BOTT. Yes. All he is trying to do is get the witnesses together and to come in, and let a court reporter take down their story. Under the Administrative Procedures Act, which I know you are familiar

with, Congressman, as a lawyer, representation cases in which Miles McCormick participated are not covered by that act. They are specifically excepted, and they are not adversary proceedings. He can investigate and hear and act as a monitor, and they have been doing that for many years, and without any general complaints from the parties.

The hearings are held in a very informal way. I say he acts as a monitor. That is just about what he does. He gets their story on the record and sees that the record is complete. And under the Taft-Hartley law, he cannot make any recommendations or he cannot make any decisions; he cannot make any recommendations under the Taft-Hartley law.

Mr. WAINWRIGHT. But should an employee of the Federal Government, and particularly your department, participate with a union official in the intimidation of a witness, even though he did not say a thing?

Mr. BOTT. That is the second point. I do not want to mix these up.

Mr. WAINWRIGHT. Would you answer my question "yes" or "no"? It is susceptible of that.

Mr. BOTT. I will answer your question, but I don't want the questions blurred. I don't want the record blurred.

Should he participate in going out to somebody's home and saying, "You shouldn't do that. This is a Federal officer"?

Mr. WAINWRIGHT. That is not the question I asked.

Mr. BOTT. I believe he should not participate in a scheme where a union—

Mr. WAINWRIGHT. I did not call it a "scheme." I just said: Should he participate in a union official coming along and apparently, from the statement that we heard from Mr. Barden, bullying an unfriendly witness? Should he even be in there and participating in that?

Mr. BOTT. No, sir.

Mr. WAINWRIGHT. That is all I asked. That is the only question I wanted to bring out.

Mr. BARDEN. Now, Mr. Bott, he does not mention in his statement there a single meeting or discussion that he had with Mrs. Jackson, does he?

Mr. BOTT. Yes, I think he does.

Mr. BARDEN. I could not find any.

Mr. BOTT. That is with Mrs. Jackson?

Mr. BARDEN. That is right.

Mr. BOTT. McCormick says nothing about talking with Mrs. Jackson. There were two men on this case, in the early stages. There was the field examiner, who makes the preliminary investigation. He had a conversation with Mrs. Jackson which does not appear here in extenso.

Mr. BARDEN. He does not mention talking with Mrs. Jackson.

Mr. BOTT. He does. He says:

* * * the field examiner advised Mrs. Jackson that he would be in the vicinity of Morehead City on August 3 and would like to meet with her at conference.

And then he

finally saw Mrs. Jackson on August 10, and at that meeting Mrs. Jackson told him * * *

and so forth.

Mr. BARDEN. Told who?

Mr. BOTT. This is a field examiner, and this is not Mr. McCormick. Mr. McCormick was the hearing officer, and the field examiner made the preliminary investigation, as they did.

Mr. BARDEN. I want to read you a report of a meeting of September 6, I believe it was, of 1949, at 12:59 p. m.—

Mr. BOTT. What was the date?

Mr. BARDEN. September 6, 1949, at 12:59 p. m. [Reading:]

Miles McCormick came in the office to see me, and he presented evidence stating he was an NLRB representative. He asked me why I had not appeared at the hearing, as the subpoena requested. I said that the subpoena stated that I could appear if I wanted to.

Then he told me I was wrong. He said that I, Mr. Dill, and Mr. Hooper, had all been subpoenaed and that the only one to show up at the hearing was Mr. Hooper. And when it came time for him to take an oath to tell the truth, Mr. Hooper refused to do so, as he didn't want to swear to a lie.

I said Mr. Hooper should not have been subpoenaed as he knew nothing about this. And he said he would subpoena anybody he pleased, and that they would appear the next time. He said he had taken enough insolence from us; that this was the first time he had ever experienced any such insolence, and he repeated again that the next time he came here he would have the power to get what he was after; and who did we think we were, fighting him and the United States Government.

He then told me that he would have to have certain commerce information, and I said that this information had already been supplied. And he said the only information he had received was on the outgoing shipments, and he must have that on the incoming.

I replied that I would have to take it up with my associates and then get counsel before I gave this information.

Mr. McCormick requested that I give him the address where he could get this information right now, and I said that it would come through this office, after I had contacted my associates and counsel.

Mr. McCormick asked me if I had not had sufficient time to get this information, and I replied, "No, we have been too busy to get everybody together so far." Then Mr. McCormick made the statement that, "You had better get the data and get it damn fast."

I told Mr. McCormick that that was no way to speak to a lady, and that he could leave. Mr. McCormick then apologized for his statement, but persisted in demanding the information he wanted. He made the statement that the next time he came here, he would have the power to subpoena the books and records, if necessary, so that he could get the information he wanted.

I said to him as he was leaving, "Mr. McCormick, after you have lived a little longer, you will probably learn how to talk with people," and he mumbled something in reply.

Mr. McCormick was accompanied by another man whom we have reason to believe was Sullivan, connected with the union. They were both very uncouth in dress. Although this man with McCormick said nothing, McCormick was most uncouth in his manner and appearance, as well as belligerent.

Now you tell me that you meticulously investigated this situation down there among those folks, and that that man is the type of man that you want to handle the affairs of the people of my district?

Mr. BOTT. There is nothing about that conversation in this document, but I have a recollection of having received a report on that incident. It is not in this document, but I do have that recollection.

Mr. BARDEN. Mr. Bott, I know you remember what I said before; that I said that if I thought you condoned that kind of thing, I would devote my whole time in trying to blast the outfit out of existence.

Now, I am not mean about this, except I tell you in all sincerity if there is ever a time on God's earth when the United States Government needs to make friends, it is now. And any man who goes around making good citizens mad, and creating contempt for this Government,

is not a friend of the United States Government. I am very much concerned over this kind of a thing.

I could continue reciting this kind of thing, and I have another stack of cases here from Natchez, Miss. Do you have a fellow Carter in your employ, or have you discharged him?

Mr. BOTT. He is in private practice, and he resigned.

Mr. BARDEN. For very good reasons, did he not?

Mr. BOTT. Oh; no, sir.

Mr. BARDEN. You mean you did not have anything to do with his leaving?

Mr. BOTT. No, sir.

Mr. BARDEN. I was giving you credit for firing that fellow.

Mr. BOTT. It would not be any credit. He is a fine gentleman from Louisiana, with a good reputation, and he has gone with a very good law firm. When I said he had good reasons, he had good financial reasons.

Mr. BARDEN. Well, I have a stack of them here.

Mr. BOTT. If I could insert, I think the Carter incident—I never did get the name of the case, but I think, from some independent recollection, that was about offering an exhibit in evidence or a statement, and not letting opposing counsel look at it, if that is the right case. Now, I think that that was wrong, as a lawyer.

Mr. BARDEN. You did not give all of that statement. He just did not give all of the statement to the court.

Mr. BOTT. But it was finally put in evidence.

Mr. BARDEN. After he got caught.

Mr. BOTT. I think it is wrong, and I think that that is due to youth and inexperience.

Mr. BARDEN. That is just like a man being willing to give up money after you catch him with it.

Mr. BOTT. I do want to say, charitably, I think it is true that lawyers make that mistake; that we all know that if an exhibit has been referred to or used in evidence, opposing counsel has a right to look at it and get the whole story. That is the rule about the whole statement, and you can't just put in part. If that happened, and I never got a report on it and I know about it for some other reason, I do not know why. But surely he should have let the counsel look at it and should have put the whole thing in the record. I do not know why I know of that case, but I do.

Mr. WAINWRIGHT. Would you yield for a moment at that point.

The situation that Mr. Barden is presenting is not an isolated situation. We had a gentleman testify before us recently—his name was Reilly—and he represented the Reilly Cartage Co. I will read a brief paragraph from his testimony—and do you remember the testimony?

Mr. BOTT. I have a very short statement on that Reilly Cartage case.

Mr. WAINWRIGHT. I am taking it, not out of context, and I will give you the whole paragraph, because this is the only place in which he touches on this particular point, but I think it is a very important one:

In connection with that charge against us, I ought to tell you that when the Labor Board field examiner, William Boetticher, came up from Chicago to talk with my employees, he went to the local union office and got their representatives to drive him around and stop our trucks on the streets of Milwaukee and question the drivers. I hasten to say that I don't mind the Labor Board talking

to my employees, but I don't think they should do it with union organizers along with them, and especially when one of our customers is unknowingly paying for this time. A great deal of our work is charged on a time basis. I found out about these incidents several days later. One driver told me that he refused to stop so they followed him until he had to stop to make a delivery. He also told me that they wanted him to sign some documents which he refused to do.

Now, I show you that, in order to show you that we have heard a good deal of testimony on that point. The first thing that the Trial examiner does is to go to the union office and get either the union representative or the organizer, as he is referred to in this case, and start out his rounds. In other words, we are questioning the impartiality of it.

Mr. BOTT. Well, that was brought up before, and I said I would prefer that our investigators didn't have to get their evidence through union people; that I would rather have them be completely independent and drive their own cars. But they have to start someplace, and the normal procedure is to first contact the person who initiates the proceeding, the charging party. That is either the company or the union, and in some cases they are brought to witnesses by the company or the union.

I do not like it, and it is not the general practice, but it does happen sometimes. I think it gives the defendant or the respondent, as we call them, the opposing party, a feeling that, "Well, the charging party and the Government are together and against us."

But the way to investigate is to investigate, to get your witnesses where you can.

Mr. WAINWRIGHT. At the same time, it would seem to be rather dubious conduct to force another truck down and to haul the driver out to get his testimony, and present him apparently with the results of the conversation that took place between the union organizer and the field examiner, and say, "Sign this."

Mr. BOTT. That would be. I did not get the implication that our man forced the truck down, but maybe that is what he said, and—

Mr. WAINWRIGHT. The implication is here, and it says:

One driver told me that he refused to stop so they followed him until he had to stop to make a delivery. He also told me that they wanted him to sign some documents which he refused to do.

This is where they presented the statement to him—

they wanted him to sign some documents which he refused to do.

I am not bringing this out for any other purpose than to show you that Congressman Barden's point is not isolated, as far as this committee is concerned, and we have heard a great deal of testimony along that same line.

I think that if you analyze it with a degree of impartiality, you cannot fail to admit that there have been quite a good many abuses in instances such as these.

Mr. BARDEN. Let me just say this to Mr. Bott: My discussion of this matter at the first hearing, I thought, was enough for some kind of action. I do not know Mr. McCormick, and I have never met him, and I understand in ordinary daily life that he is a very nice fellow. But on the record I read here, and as you have said about some other testimony, I can not help but believe this stenographer's report on these conversations. I think Mr. McCormick felt that he was in the kind of atmosphere that required him to be partial to the side that

he was partial to. He did not realize that the Federal courts were bound by the evidence in that record, and it is conclusive.

I have a statement from one of the greatest Federal judges in the United States making a statement similar to that: That when you begin to foul up a record, then you can find anything to be the truth—I mean, to be supported by the evidence.

And I say to you as to the average businessman, that the percentage of gentlemen in the average small business is just as high as it is in my profession and your profession, regardless of what you might say about them being disgruntled losers. But I say to you in all sincerity, Mr. Bott, they just shudder at the mention of the National Labor Relations Board. And when you take a record here that carries this, could you just imagine any small company being bedeviled over as many years as they were with a thing like that? If that process is kept on with, people going around stirring up these things and encouraging them, your Board never will see the light of day, and 10 more boards like you could not catch up with your docket, so far as that is concerned. It is a perfectly impossible task.

Now, I want to say this about this case that was filed last November. There is not any question in my mind, not one particle, but what it was inspired by one of your men. They did not want an election then, and they knew they would lose; and when they filed a complaint, that blocked it. That blocked it until they wanted to hold it. That is the way they took charge of it. So they blocked it.

It was filed last November, and a whole drove of them have been down there half a dozen times since then, and they went down and held the election and all of that.

Had they wanted to investigate that simple little case, do you not know they could have done it?

Mr. BOTT. I do not know anything about that new case.

Mr. BARDEN. No. In addition to this long list here that I read, of all of these proceedings, they still have got a club in their hands to bat them over the head with and further harass and bedevil them.

I am going to tell you as frankly as I know how to tell you, the American people are not going to stand for it.

Mr. BOTT. I understand that the charge didn't hold up the election. The election did take place.

Mr. BARDEN. But the reason it did not hold it up was because the union gave their consent for it to go on, and the only reason it was filed was to take charge of setting the date for the election.

Mr. BOTT. I also think—and this I am not sure about—that the compliance case hadn't been closed at that time, either, had it?

Mr. BARDEN. Oh, yes, it had been closed.

Mr. BOTT. That was only closed recently.

Mr. BARDEN. It was closed, and they were put back to work long before this happened, and certainly before they called another election. You know that would happen.

Mr. BOTT. I don't know, and perhaps I shouldn't raise it; I don't know the facts on that incident.

Mr. BARDEN. It is in the record here, and I have got so much stuff piled up here I am afraid to lift up anything, I am afraid it will start me off on another point.

Mr. BOTT. Let me read to you the memo I sent out to our regional people after the testimony here back in February when you told me

about these things. It is just an indication of our desire to cooperate and have our good faith. I would appreciate it if you would let me tell you what I told the regional people after that incident. It is a very short letter.

Chairman McCONNELL. Go ahead.

Mr. BOTT. This is to "all regional directors and officers in charge":

During the current hearings before the House Committee on Education and Labor, the conduct of some of our field personnel has been criticized by various members of Congress. An excerpt from these hearings, including a portion of the General Counsel's remarks on the subject, are attached for your information and guidance. Let me say at the outset that the General Counsel and I know that all of you and your staffs, by and large, carry out your tasks in a manner beyond reproach and in accordance with the high standards we have always set for ourselves. However, we all know that this field of labor relations is a controversial, even explosive one. We cannot improve our relationship with the public by relaxing our prosecution of the act, and therefore we must all endeavor at all times to maintain the conduct of our work on the highest plane.

This means coupling a thorough and conscientious administration of the act with unfailing courtesy toward those with whom we deal. If the information is there we want the field examiners to get it, and we want the attorneys to try their cases with all of the resources at their command; and, in short, we want a firm and vigorous prosecution of the act. But we don't want and we won't tolerate anyone throwing his weight around. An overbearing and belligerent attitude is not a necessary part of a good investigation or trial. But good manners and good sense are. They are the basic elements of good public relations.

I cannot emphasize too strongly the importance of good public relations. In the main, how good they are is determined by you and your staff in your day-to-day contact with the public. The unusual feature of our work is, of course, that the people with whom we work are the same people for whom we work. They are our employers, and we should never forget this all-important fact.

Please bring this memorandum and attachment to the personal attention of each member of your staff. I am confident that all of our field personnel will be eager to cooperate in improving the position of the agency in the eyes of the public.

Mr. BARDEN. I do not know when that went out.

Chairman McCONNELL. What was the date?

Mr. BOTT. March 23, 1953.

Mr. BARDEN. That hypodermic has not had time to take effect.

Mr. BOTT. We can fill it again.

Mr. BARDEN. March 23 was the other day, and the United States Government cannot do anything in 10 days except make a mistake once in a while.

Mr. BOTT. I attached to that the testimony and the colloquy between yourself and myself.

Mr. BARDEN. I do not know the real motive behind this additional charge. They are withholding it for some purpose that is not good. I have never represented the Morehead City Garment Co., and I have never appeared in a lawsuit in the nearly 20 years I have been in this Congress, nor have I ever collected an attorney's fee. I separated myself from it. But, so help me goodness, if they attempt to take some punitive action against this company because of my investigation or because I went fully into this or put this in here, if I do not meet them something will happen to me between now and then, and I am not inviting that.

I hope you will get that across to Winston-Salem. If they want to challenge somebody, that is the quickest way I know for them to do it.

Chairman McCONNELL. Mr. Metcalf, before you start I want to make one announcement here.

Mr. Bott, it is very obvious that there are many cases involved here, and also, I realize that there are some very important decisions, as far as this committee is concerned, that rest on certain matters of judgment in connection with these cases.

I have looked over these cases you have submitted more carefully, and I realize what I did not at the beginning: that it is not just a recital of the case, which is what I thought, but is an answer to criticisms in the testimony. For that reason—and I wish to be very fair in this thing because, as I said, it is important that we know exactly what we are doing in the future—I am going to reverse my former position and receive these cases into the record. I hope that will clear the general atmosphere, and we can all relax just a little more than we may have done and continue with this until we are ready to quit, or until we have talked ourselves out.

This will be the last day of hearings, and I am not going to continue them another day. If we have to go on to eight o'clock, we are going to finish today.

Mr. Bott. I appreciate that so much, because it makes it just easier for me, too, besides my desire to have it in. I want to rest now legally and physically, and any other way, as far as my presentation of this material is concerned. I do not think that I have anything else to offer, if it is in the record, but I will answer any questions.

Chairman McCONNELL. Within my mind is an uneasy feeling about some of the actions of this Board and of the people down through the ranks. But I want to be absolutely fair, and I do not want to make an unjust decision if I can possibly help it. I am human, and I might, but I certainly do not want to. Therefore, I want all of the facts in the record.

(With the exception of the chart of case handling and sample instructions to regional offices, which material was filed with the committee but not printed, the supplementary information submitted by the National Labor Relations Board is as follows:)

MEMORANDA ON SPECIFIC CASES

HOMEDALE TRACTOR & EQUIPMENT CO., HOMEDALE, IDAHO

(Cases Nos. 19-CA-542; 19-RC-877; 19-RC-951)

On March 20, 1953, Mr. Cyril W. Radcliffe, copartner in Homedale Tractor & Equipment Co., Homedale, Idaho, testified before the House Committee on Education and Labor with respect to his experiences during various unfair labor practice and representation proceedings involving his company during recent months.

Before taking up Mr. Radcliffe's testimony in some detail, a brief chronology is in order. As noted by Mr. Radcliffe, this company was established in Homedale, Idaho, a small community of some 1,500 people, in 1948. On July 2, 1951, Local Lodge 1491, International Association of Machinists, filed a petition for an election among the company's employees. On July 16, 1951, Local Lodge 1491, International Association of Machinists, filed a charge in the Seattle regional office of the agency, alleging that the company had discharged 5 employees because of their activities in behalf of the charging union; had refused to bargain with a union representing a majority of its employees; and had otherwise interfered with the rights guaranteed to its employees by the Labor-Management Relations Act of 1947. Because of these unfair labor practices, the union withdrew its petition on August 24, 1951. After careful investigation, the regional office determined that there was merit to the charge, and on December 5, 1951, issued a complaint alleging that the company had violated section 8 (a) (1) and (3) of the act by the aforesaid discharges and by interference with the rights of its employees. At the insistence of the region, the union had in the meantime

dropped its refusal-to-bargain charge. The unfair-labor-practice hearing was conducted on January 14, 1952. On March 10, 1952, Trial Examiner Howard Myers issued his intermediate report finding that the company had violated the act as charged. On October 31, 1952, the National Labor Relations Board issued its decision and order, finding that the company had violated the act as charged. The company refused to comply with the Board's order, and so the matter is now pending enforcement in the Ninth Circuit Court of Appeals in San Francisco. In the meantime, the union had filed another petition, an election had been conducted, and the union had lost. Objections were filed by the union, but they were found by the region to be without merit and overruled. The representation case was consequently closed and is out of the picture.

Since the unfair-labor-practice case is presently pending in the circuit court of appeals, we would not ordinarily enter into a public defense or debate of its handling. However, the charges leveled by Mr. Radcliffe in his testimony before the House Labor Committee are so serious and have been given such widespread, damaging publicity that immediate reply is required.

1. It is not possible to answer every charge made by Mr. Radcliffe. In general, it must be remembered that his testimony is colored throughout by his belief that the case lacks merit. This is no phenomenon. Like many another man, Mr. Radcliffe has run afoul of the law and has lost his case. In this respect, it can only be said that the General Counsel, through the regional director of the 19th region, issued a complaint alleging that the company had violated the Labor-Management Relations Act of 1947 by discharging 5 employees because of their union activities and by engaging in other proscribed conduct. A trial examiner completely independent from the supervision of the General Counsel listened to testimony received under proper judicial safeguards and concluded that the company had violated the act. Upon appeal, a National Labor Relations Board, which had nothing to do with the issuance of the complaint or its trial, reached an independent but similar conclusion. The matter is now before the Ninth Circuit, which is where it should be if the respondent questions conclusions of law reached so far. We believe that there is substantial evidence on the record considered as a whole that this company discharged 5 employees because they attempted to organize a union; strategically timed an announcement of a retroactively effective profit-sharing plan, heretofore only under consideration; and engaged in other violations of the act, in order to defeat its employees' move to organize. Only time and the Ninth Circuit can tell us if we are finally right. In the meantime, it does not appear that anything would be gained by arguing the merits of this case before this committee, although the handling of the case is, of course, properly the committee's concern.

2. On page 1941 of the printed record, Mr. Radcliffe states:

"How does the NLRB investigate? This Government man came straight to union headquarters in Boise and asked for the details of the dispute. So the union told him the story—their side of it. Then in the evening they brought him out to Homedale and let him talk to these three men who had been discharged. Naturally, these men were disgruntled, and their story jibed then with the union's right down the line * * *

"Never once did [the field examiner] set foot inside the door to see what kind of place of business we operated. Never once did he ask to meet the management that he was prosecuting. He was satisfied that the union's story was the whole story, and he went back to Seattle and prosecuted the case on that basis."

Again, on page 1955, Mr. Radcliffe states:

"In other words, [the field examiner] says he tried to see me, but I referred him to my lawyer. My partner was in Illinois on his vacation; we take our vacations in the wintertime in the implement business, and he has never to this day ever seen the field examiner. I saw the field examiner on one occasion only when he came to Homedale on December 22 to conduct the election. They arrived at 8 in the morning with the union organizer. They conducted the election, and he left immediately. I was hoping that I would have a chance to discuss some of the details of the case. They left immediately. They got in the organizer's car and went back to Boise, and that is the only time in my life I have ever seen the field examiner. At no time has he ever written me a letter or phoned me or asked to come in and see me."

The facts are contrary to what Mr. Radcliffe would have the committee believe, for he erroneously suggests that the company was not given an opportunity to present its "story" to the field examiner. Soon after the charge was filed, however, the regional director, by letter dated July 17, 1951, invited the company to "advise us as to your position in this matter." The company's attorney, E. A. Weston of Boise, Idaho, throughout several years of dealing with the Seattle

regional office had consistently opposed regional personnel talking directly to his clients in his absence. Believing that he should receive such instructions, if forthcoming, from the company management, Field Examiner Howard Hilbun called the company from Caldwell, Idaho, on July 24, 1951, and attempted to talk to Mr. Radcliffe. It was not in the winter; as Mr. Radcliffe testified. Mr. Radcliffe was not in; so Hilbun talked to Mr. Mancke, the other partner. Mancke directed Hilbun to contact the company's attorney, Mr. Weston, in Boise. He also informed Hilbun that Radcliffe was in Boise that day. Upon arriving at Mr. Weston's office, Mr. Hilbun discovered that Mr. Radcliffe had left. Hilbun therefore thoroughly discussed the case with Mr. Weston and suggested that he arrange a meeting between the field examiner and the two partners. Mr. Weston stated that that would not be necessary, that he had already written Seattle a letter setting forth the company's position.

Mr. Weston was apparently referring to a letter dated July 24, 1951, in which he stated:

"I believe I have already discussed the case with you informally in my office and I think you know the company's position with reference to this charge."

Attorney Weston again indicated, in a letter dated December 5, 1951, that the company had had ample opportunity to present its position during the investigation. This letter states, in part:

"I received the copy of the amended charge filed in the above-entitled case [case No. 19-CA-542] and, inasmuch as there is no request to state our position and *inasmuch as we have already given you the facts with reference to this case, we assume there is no occasion to make further statements.*" [Emphasis supplied.]

As previously noted, this amended charge contained no new allegations, but merely deleted the refusal to bargain allegation.

Contrary to Mr. Radcliffe's testimony on page 1941 that only three discharged employees were questioned, the field examiner interviewed 8 of the company's 11 employees. The field examiner's efforts to interview the remaining employees were unsuccessful. Since only four votes were cast in favor of the union at the election, it is apparent that the field examiner did not interview only prounion employees. On the contrary, Mr. Hilbun interviewed all management personnel and employees that were available to him.

It must be quite clear by now that no ex parte investigation was conducted. Such an investigation would be directly contrary to our policy, and could not pass unnoticed through the analyses which precede a decision to issue complaint.

In fact, later, in connection with the investigation of objections to the election which the region found to be without merit, Field Examiner Julius Draznin asked Attorney Weston to have the officials of the company available for interview on February 20 or 21, 1952. By letter dated February 13, 1952, Weston advised that the officials would be available, stating further:

"I am having some difficulty explaining to my clients why they should be continuously called upon to take their time from their business, or why their employees should be continuously questioned and investigated, after the company consented in good faith to an election which was lost by the union."

Thus, Mr. Radcliffe complains to the committee that the field examiner made no effort to see the management, but during the investigation his attorney complained that regional personnel tried to see the management too often.

As for Mr. Radcliffe's description of the nature of the investigation, it is customary procedure for the field examiner to begin his investigation by obtaining a broad outline of the allegations of the charge through an interview with the charging party, be it an employer, a union or an individual. Thus, should Mr. Radcliffe someday file a charge, upon arriving in Homedale the field examiner would go straight to the company's offices. Moreover, the charging party is required to furnish evidence in support of his charge, or direct the examiner to persons who can. If the charging party is unable or unwilling to cooperate, the charge is dismissed. If additional evidence or witnesses are forthcoming, the field examiner continues his investigation until he has interviewed all witnesses who are willing to be interviewed; gotten the positions of all parties willing to give them; and he feels the investigation is sufficiently complete to permit a decision on the merits of the charge.

In reference to Mr. Radcliffe's testimony on page 1956, that Mr. Hilbun went to the election with the union organizer, this is denied by Mr. Hilbun. His travel voucher shows that he used his own car and that he did not return to Boise after the election, as testified to by Mr. Radcliffe. Nor did he leave the election with the union representative, as indicated by Mr. Radcliffe on page

1957. In this connection it should be noted that both field examiners Hilbun and Draznin are submitting statements for the record on the various incidents involving them described by Mr. Radcliffe.

3. On pages 1941-2, Mr Radcliffe charged that "there is no such thing as a secret ballot in America today" because an employee had to sign his name to an envelope containing a challenged ballot.

We make an effort before every election to eliminate disputes as to who is eligible to vote. Sometimes persons not eligible to vote present themselves at the polls. In such cases, either party has the right to challenge the disputed ballots. In the event of a challenge, the challenged voter is given a ballot and a small "secret ballot envelope," with instructions to mark his ballot and seal it into the envelope while still in the booth. It is then returned to the field examiner who inserts the sealed secret ballot envelope into a larger challenge envelope, on which he places the voter's name and the reason for the challenge.

The reason, of course, for the name on the larger challenge envelope is that there must be some way of separating the envelopes of challenged voters. Otherwise, if it is decided to count all ballots but one, how could the envelope containing that one voter's ballot be separated? Secrecy of the ballot is protected, because after it is decided which ballots should be counted, the small secret ballot envelopes are removed from the larger envelopes and mixed together. They are identical and so it is impossible to know, when they are opened and the ballots are extracted, which was whose.

In any case in which only one voter is challenged, the secrecy of that ballot is destroyed if it has to be opened. This is true whether or not his name is placed on the outer challenge envelope. In this particular case, the ballot of the challenged voter was not determinative of the results of the election, and consequently it has never been opened. To this day no one knows how he voted unless he himself has said.

The challenge ballot procedure is one of the many accommodations that must be made in the practical application of a statute. No one would want an election involving hundreds, or even dozens, of voters delayed by a wrangle over the eligibility of one or a few employees. Quite frankly, we have not received criticisms concerning this aspect of elections, and it is believed that interminable delays in our consent procedure would be introduced by abandonment of the challenge process.

4. On page 1942, Mr. Radcliffe criticizes the regional office because it accepted the union's objections to the election although they were not filed until December 31, 1951. Since the election had been conducted on December 22, 1951, the objections appeared to be not timely filed. In determining otherwise, as was explained to Mr. Radcliffe at the time, we were guided by the rules and regulations of the Board, section 102.83, which states:

"Time; additional time after service by mail —In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day, which is neither a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Sundays and holidays shall be excluded in the computation. For the purpose of this section a Saturday on which the Board's offices are not open for business shall be considered as a holiday; but a half holiday shall be considered as other days and not as a holiday. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or other paper upon him, and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period, provided however, that 3 days shall not be added if any extension of such time may have been granted."

Not counting the day of the event is uniformly followed in all courts. The days the Board's offices are not open are not counted by the agency where the filing

¹ The Board's rules and regulations in this regard are similar to rule 6 (a) of the rules of civil procedure for the district court of the United States

period is less than 7 days. In the instant case, the regional office excluded the following days in determining whether the objections were timely filed

<i>Days excluded</i>	<i>Reason</i>
Dec. 22, 1951-----	Day of the election.
Dec. 23, 1951-----	Sunday, regional office closed.
Dec. 24, 1951-----	All Federal offices closed at direction of President.
Dec. 25, 1951-----	Christmas Day.
Dec. 29, 1951-----	Saturday, regional office closed.
Dec. 30, 1951-----	Sunday, regional office closed.

The regional office properly concluded that December 26, 27, and 28 should be counted and that December 31 constituted the 4th day. Thus, the objections were within the prescribed 5-day period, and we were so required to find.

On page 1943, Mr. Radcliffe again refers to the acceptance of the objections to the election, stating that the regional director cut 10 days down to 3. On that same page there appears this statement from Mr. Radcliffe:

"When our attorney asked the regional director's fieldman for the authority for declaring Monday a holiday, he was told that it was by the Board's rules and regulations. When asked to see the regulations, the fieldman said they were not for inspection and they could not be seen, and really it was none of our business."

Mr. Radcliffe is referring to field examiner Julius Draznin in this testimony. He has reported that he explained to attorney Weston and Mr. Radcliffe that Monday, December 24, 1951, had been declared a holiday by Executive Order of the President. Mr. Draznin did not state that the rules and regulations were not for inspection. He did state during the discussion that he was bound by the Board's rules and regulations, quoted above, and the instructions to be found in our field manual, implementing the regulations. When requested to produce the field manual for inspection, Mr. Draznin stated that it was not for public inspection. It can be assumed that Mr. Weston, a lawyer of many years' experience in this field, has copies of the act and rules and regulations.

5. In Mr. Radcliffe's testimony beginning with the last paragraph on page 1942, he states:

"What were the reasons for invalidating this election? Among the other unfair labor charges filed against me is this one: 'Granting to the employees in the unit free use and access to company-owned machinery and equipment to be used for the employees' personal use.'"

"What that means is this: If one of my men has to move his household goods across town, we let him use our big truck. If he wants to plow his garden in the spring, he takes home a used tractor and plow and gets the job done. If he wants to overhaul his personal automobile in the evening or on weekends, he brings it into our shop and uses our shop and tools * * *. After 7 years of that policy it was declared an unfair labor practice in order to invalidate an election."

The facts are the election was not invalidated, and we have not declared the policy referred to an unfair labor practice. After investigating the objections, the regional office found them without merit and requested the union to withdraw the objections. The union did in fact withdraw its objections and the company was so advised. The action of the union in withdrawing objections eliminated the necessity of preparing a lengthy report and simplified the closing of the case. The company was cleared of charges of interference with the election and the representation case was closed.

6. On page 1944 Mr. Radcliffe quotes his attorney as stating, "* * * management seldom wins hearings with the National Labor Relations Board."

The statistics relative to disposition of case filed within the 19th region constitute the best reply to this accusation.

During the period from July 1, 1950, to December 31, 1952, the region closed 394 cases in which unfair labor practice charges had been filed against employers. Approximately 83 percent of the cases closed were dismissed or withdrawn² at the conclusion of the investigation. (104 were dismissed and

² When the investigation discloses that the charge is without merit, the region requests the charging party to withdraw the charge. Such withdrawal eliminates the necessity of preparing a final report and simplifies the closing of the case.

224 were withdrawn.) Settlements were executed in 7 percent of the cases closed during that period and complaint had issued in the remaining 10 percent of the cases closed. One would expect, after such thorough screening, that the region would win most of its complaint cases. Nevertheless, 45 percent were dismissed after hearing.

7. On page 1944 of the committee transcript, Mr. Radcliffe complains because certain records of the company were subpoenaed and leaves the impression that he was compelled to attend the hearing against his will. Regarding the subpoena, the general counsel was required to prove jurisdiction of an implement dealer. The board has asserted jurisdiction over implement dealers in some instances and had refused to assert jurisdiction in others.³ Accordingly, the matter of jurisdiction could not be treated lightly. It should be pointed out, however, that the trial attorney made an effort to accommodate respondent in this regard. By letter dated January 10, 1952, he advised respondent:

"We would appreciate having the original records available for inspection, but copies of summaries of the information requested is sufficient for our needs. We do not wish to inconvenience you by seeking the release of your original records

"You may expect the fullest cooperation from us causing you the least inconvenience possible."

Regarding the inference that Mr. Radcliffe was compelled to appear against his will, his attorney indicated that the company welcomed a hearing on the unfair labor practice charges. Attorney Weston, by letter dated November 19, 1951, advised: "We will still consent to the election, leaving those charges pending, providing an immediate hearing can be held on the charges."

8. On page 1944, Mr. Radcliffe complains that, "We can only afford one lawyer, but the NLRB had flown two attorneys in from Seattle to prosecute this little store at Homedale, Idaho."

It is not of great significance, but, in order to keep the record straight, the attorneys were not flown from Seattle. They took the train. It is true that two attorneys appeared for the General Counsel. Attorney A. C. Roll actually tried the case, and Attorney Paul Weil, who had no experience in trying Board cases, accompanied Roll to the hearing for the purposes of observing the trial of an unfair labor practice case. Weil examined only one witness. The assignment of Weil to assist Roll was primarily for the purpose of in-service training.

9. On page 1945, Mr. Radcliffe criticized the trial examiner because he credited the testimony of Witness Stimmel. While it is not for us to defend the trial examiner's credibility finding, Mr. Radcliffe is of course inferentially criticizing our allegations based on Stimmel's testimony. Congressman Elliott asked Mr. Radcliffe:

"Do you mean to tell me that this witness gave testimony which was not accurate or correct and admitted as much, and yet the trial examiner gave full faith and credit to the evidence that he had admitted himself was erroneous?"

Mr. Radcliffe replied:

"That is right, sir. You will remember that I asked you to keep in mind the date of June 25 when we received the letter from the union, the registered letter. We had maintained throughout that the receipt of that letter was the first we ever knew of any union activity in our place of business. It was on June 22 that I released the 3 men, 3 days before we ever heard about the union. This witness here that I refer to, this witness Stimmel, testified that he had a conversation with Mr. Radcliffe in Mr. Radcliffe's office at which time Mr. Radcliffe told him that he knew about the union's activities in trying to organize our business. And he said it was as nearly as he could remember about June 15. That was in the morning session. Our attorney spent a great deal of time in cross-examining him to prove that at no time had such a conversation taken place until after the 25th of June. It wasn't until late in the afternoon that this paper was produced in the man's own handwriting where he had related to the union his conversation with me, and in the statement he said, 'My discussion with Mr. Radcliffe took place on June 27, 2 days after that.'

"So, naturally, I said on June 27 that I knew about the union's activities because it was 2 days later. That is the reason that date became important. Because if my conversation with him did take place on the 15th, then I would certainly be charged with all the labor charges in the book, practically.

³ Jurisdiction asserted in *Dome Tractor* (80 N. L. R. B. 24), and *Holm Tractor Equipment Co.* (93 N. L. R. B. 222); jurisdiction was not asserted in *A. G. Schmidt, Farm Equipment* (90 N. L. R. B. 2152).

"The fact that I knew nothing about it until the 27th was a very important point. That is all in the record, Mr. Congressman, and still I point out right here, where it says, 'The findings regarding the above Radcliffe-Stimmel conversation are based on Stimmel's credible testimony.'"

The record in the complaint case shows that only two employees were terminated June 22, 1951, instead of 3 as testified to by Mr. Radcliffe. In all, there were 5 employees who were terminated, instead of 3 as Mr. Radcliffe had testified. Those employees and the dates of their termination are as follows:

Lowell Maybon, June 22, 1951.

Robert Watkins, June 22, 1951.

Wilbur Snyder, June 27, 1951.

Ernest Runger, June 28, 1951.

Jess Runger, June 28, 1951.

From the foregoing it is evident that by Radcliffe's own admission, he was aware of union activity among the employees on June 25 prior to the discharge of Snyder and the two Rungers on June 28. Moreover, Radcliffe's knowledge of the union activity prior to the discharges of Snyder and the two Rungers is clear from the testimony of employee Robert Stimmel, and by further admissions of Radcliffe. Radcliffe concedes to the committee that he discussed the union with employee Stimmel on June 27 after having received the union's letter on June 25, 1951. Stimmel testified on direct examination, without contradiction by Radcliffe, concerning this conversation as follows:

"Q. What transpired at that interview?—A. He (Radcliffe) told me that he knew that we had had the meetings, and he said that he didn't have to have spies to find out, those things just got around.

"Q. Did he say anything to indicate that he was—that he actually did know what went on?—A. Well, the whole thing, he said that he knew that one man left early, Jack Thomas, he left early to pick up his wife, so I know he must have known something what had happened at the meeting.

"Q. Did he say anything else at that time?—A. Well, he said he thought that Wilbur Snyder was at the head of the business of us guys being down there, and was a trouble maker.

"Q. I beg your pardon, are you quoting him directly? Do you remember exactly what he said?—A. Well, he said he was the man that was causing the trouble.

"Q. Was there anything else said there at that time? Did he mention any action that he had taken, or was about to take?—A. Well, he said four more guys were going to be discharged; he told me that.

"Q. Did he specify who those four were?—A. No; he didn't.

"Q. Did he imply that you were among those?—A. No; he didn't imply one way or the other at that time

"Q. Do you know whether he did in fact fire four more?—A. Well, he didn't fire four more.

"Q. Did he fire any?—A. Yes, he did

"Q. Who?—A. Ernest and Jess Runger."

In a further answer to a question posed by the trial examiner concerning the conversation between Stimmel and Radcliffe, Stimmel testified as follows:

"Q. All right. Kindly tell us all that you remember. Start over from the beginning, if you can.—A. Well, he (Radcliffe) told me that he knew about our meeting, and he knew that Jack Thomas had left the meeting first, and he knew that Wilbur Snyder was the one that was probably getting the thing up and causing the trouble, and he was going to get rid of four men, and that they couldn't operate with the union in the shop, he told me that. That covers everything that I can remember right now."

This testimony, credited by the trial examiner, shows that Radcliffe was aware of the employees' union activity immediately after their first meeting on June 4, 1951, before any discharges. In Mr. Radcliffe's testimony he did not deny any of the statements attributed to him by Stimmel, and they stand admitted in the record. Wilbur Snyder was discharged at the end of the work shift on the same day of the discussion between Radcliffe and Stimmel, and Jess and Ernest Runger were discharged the following day.

In his testimony before the committee, Mr. Radcliffe states that witness Stimmel gave "false testimony, which was only corrected late in the hearing when a manuscript was produced in his own handwriting which forced him to refute earlier statements."

Witness Stimmel was testifying on January 14, 1952, from memory about an event occurring June 27, 1951. Throughout his testimony, he frankly admitted

that he was unable to recall the date of his conversation with Mr. Radcliffe referred to above, and was unable to fix the date of his discussion with Radcliffe with certainty. The date was finally established by a document dated July 30, 1951, furnished by Stimmel to the union in Stimmel's personal handwriting. The content of the document fixed the date of the Radcliffe discussion as June 27, 1951, in accord with Mr. Radcliffe's testimony before the committee.

Although Mr. Radcliffe considered Stimmel unworthy of belief for his failure to remember the date of this meeting, the record shows that Mr. Radcliffe's memory was even more faulty. Yet he testified with more certainty

Mr. Radcliffe, on direct examination, testified:

"Q. You heard Mr. Stimmel testify that he had talked to you. He thought he had talked to you along about July 15 or June 15. Can you tell us the date that you first talked to him about these meetings?—A. I cannot give you the exact date, but it would certainly be very close to July 15.

"Q. That would be July 15 instead of June 15?—A. Very definitely."

On Mr. Radcliffe's direct examination he testified positively that the discussion with Stimmel could not have occurred in the month of June. In his testimony before the committee, Mr. Radcliffe concedes that the 27th of June was the correct date. It is in this conversation that Stimmel's uncontradicted testimony establishes that Mr. Radcliffe described Snyder as being the organizer and the troublemaker, and that four more employees were yet to be fired. Discharge of Snyder and the two Rungers immediately followed.

10. In reference to the testimony of Mr. Radcliffe beginning on page 1956, regarding the talk made by Regional Director Thomas P. Graham, Jr., before the Junior Chamber of Commerce of Boise, Idaho, Mr. Radcliffe states that immediately after he gave his speech of May 8, 1952, before that organization:

"They immediately contacted the National Labor Relations Board in Seattle, to have a man come over and give a speech on the other side of the case. They wanted the Government to present their side to counteract my charges. That the National Labor Relations Board in Seattle refused to do. They kept putting the heat on until finally Mr. Graham, the Director himself, came to Boise several months later and spoke to the junior chamber of commerce."

Mr. Graham has commented as follows on Mr. Radcliffe's statement:

"I have never received any request, written or oral, from any officer or member of the Junior Chamber of Commerce of Boise to make a speech before that organization to refute Mr. Radcliffe's charges. Some time during the early summer of last year, one of the businessmen in Boise called me by telephone about some other matters, and suggested that I make a speech before the junior chamber of commerce. This man was not a member of that organization, but he did tell me that if I was willing to make such a talk, he would arrange it. I informed him that I did not think I was justified in going out in the field just to appear before organizations, but that I did expect to be in Boise in August in connection with the investigation of some cases and if it was agreeable to the junior chamber, that I was willing to appear before that body. The meeting was arranged and I did make a speech, making no references to the Homedale Tractor case, merely trying to explain to the members the operation of our act.

"I emphatically deny that I made the following statement which appears in the committee transcript on page 1956. I am now quoting Radcliffe's purported quote of me: 'Now we have been criticized because we don't always stop and review the case with the management on these charges. However, if the circumstances don't indicate that we should stop and talk to the management, we proceed with the prosecution without contacting the management.' What Radcliffe has done in the purported quote is to make only a half-statement. What I did say, and this I feel can be confirmed by people in attendance, is that we have been criticized because we do not always review the case with the respondent. I pointed out that normally we do this; however, there might be two exceptions thereto. One would be where respondent has made a specific request that our investigator consult with respondent's attorney rather than with respondent. I stated that when such requests are made, we attempt to honor them. I further stated that on occasion charges are filed, our investigator contacts the charging party and its witnesses, and it is then concluded that the charging party has not presented a *prima facie* case and that the charge should be either withdrawn or dismissed. In cases of this nature, it may not be necessary to interview respondent or respondent's witnesses. What I have stated above does not constitute a direct quote of my statement before the junior chamber of commerce, but it is a paraphrase of my explanation of investigation of cases.

"At no time in this speech or in any other speech I have given, or in any discussion with parties, have I ever used the word 'prosecution.' I frequently do, and did in this case, use the word 'process' "

"Parenthetically, in my nearly 16 years with the Board and almost 11 years as regional director, one of the things I have always insisted upon and have been very emphatic about with members of the staff is that all parties be contacted during the course of investigation of a case, and that all pertinent witnesses who could throw any light on the case should be interviewed. This, I think, will be confirmed by every member of the staff. The exceptional cases are the type referred to above.

"It appears to me that the region handled this case in an orderly and proper manner. I do not think that the inference that has been left by the testimony of Mr. Radcliffe, that this agency and its employees have been biased and prejudiced, is founded upon fact. There has been no attempt on the part of this agency or its employees to force the company to recognize and bargain with the machinists' union. We alleged a violation of section 8 (a) (1) and (3), feeling that our investigation had disclosed that there was a violation. The position of the region has been sustained by both the trial examiner and the Board."

A. L. GILBERT Co.

(Case No. 20-CA-746)

On April 24, 1953, Lawrence B. Gilbert, of the A. L. Gilbert Co., in his testimony before the House Committee on Education and Labor made serious charges concerning the handling of this case by personnel of the San Francisco office.

The charge in this case was filed July 17, 1952, by Teamsters, Chauffeurs, Warehousemen and Helpers of America, local No. 386, AFL, herein called the Teamsters, and it alleged that the company engaged in violations of section 8 (a) (1) of the act by certain conduct which was claimed to have interfered with the employees' free choice of representatives. Such charge was duly served upon the employer.

The charge was later amended by the teamsters to include allegations of 8 (a) (3) and 8 (a) (5).

The case was assigned to Field Examiner Albert Schneider and after a field investigation, during the course of which Schneider interviewed witnesses on both sides, Schneider concluded that the charges had merit and reported the matter to the regional director and the chief law officer with the recommendation that complaint issue. After due consideration of the matters reported, the regional director issued complaint on November 12, 1952.

The complaint alleged in substance that the employer had interfered with the employees' free choice of representatives in various ways in violation of section 8 (a) (1) of the act, that the employer had refused to bargain in violation of section 8 (a) (5) of the act, and that the employer had discharged or otherwise discriminated against four employees: Louis Parker, Roy Fitzgerald, Gordon Leydecker, and Harvey Dickerson, in violation of section 8 (a) (3) of the act. Together with the complaint, a notice of hearing was served November 12, 1952, setting the hearing for December 1, 1952. Thereafter, the employer filed an answer in which it joined issue with the allegations of the complaint.

Shortly after service of notice of hearing, W. M. Caldwell, representing the employer, requested a postponement until after January 1. His request was granted over the objection of the union and the hearing was postponed to January 15, 1953.

The hearing was in session January 15 and 16, was recessed to February 2, by mutual consent of all parties, and was in session February 2, 3, 4, and 5. On February 5, the case was submitted to the trial examiner and briefs were thereafter submitted by the employer's counsel. At the time of Mr. Gilbert's testimony before the committee, the matter was pending for decision before Trial Examiner Howard Myers, and up to the present date, no decision has issued.

The specific criticisms and allegations made by Mr. Lawrence B. Gilbert in his testimony before the committee will be considered in the order in which they appear in the transcript of his testimony.

Allegation 1.—"After Mr. Schneider had contacted the local officials of the union and had completed his investigation in Oakdale, I was summoned to appear before him at the office of the NLRB in San Francisco."

(a) In the initial investigation, evidence is always sought first from the charging party whether it be a union or an employer, since failure to establish a prima facie case at this point results in termination of the proceeding. Such procedure was followed in the instant case.

(b) The next step in any investigation, where initial investigation indicates possible merit, is to obtain the story and evidence from the party charged with violating the act. Mr. Schneider on September 5, 1952, in the instant case visited Mr. Gilbert in his office in Oakdale, Calif., to request Mr. Gilbert's version of the charges made against him. Mr. Gilbert requested that a meeting be arranged in San Francisco so that his representative, W. M. Caldwell, could be present and, thereafter, a meeting was arranged for September 10. Later, at Mr. Caldwell's request, the meeting date was changed to September 11, 1952.

Allegation 2.—That, in substance, Mr. Gilbert at this September 11 meeting was forced to answer leading questions; that Mr. Schneider attempted to build a case for the union, that Mr. Caldwell reprimanded him for his conduct, and that Mr. Schneider showed bias by stating that he would personally amend the charges "so that they would stick."

(a) As noted above, the purpose of the September 11 meeting was to obtain the employer's version concerning the charges made against him. Mr. Schneider did question Mr. Gilbert extensively in an endeavor to obtain all the facts possible and to be certain that he understood fully the employer's position. This questioning was protested by Mr. Caldwell. Mr. Schneider explained to Mr. Caldwell that he was only undertaking to ascertain all the facts from the employer's point of view and thereafter the interview continued without further protest. No protest as to Mr. Schneider's conduct was ever lodged with the regional director or anyone else.

(b) At the September 11 meeting Mr. Schneider frankly disclosed to Mr. Gilbert that the investigation had revealed violations other than those contained in the original charge. He has been specifically asked and specifically denies stating that he would amend the charges "so that they would stick" or any similar statement.

Allegation 3. That Mr. Schneider took notes during the conference in the form of a statement; told Mr. Gilbert he had to sign the statement he had taken; and that he refused Mr. Gilbert opportunity to take his notes and correct them.

(a) Mr. Schneider stated to Mr. Gilbert that he had taken down in affidavit form the story as Mr. Gilbert had related it at the September 11 meeting and he suggested to Mr. Gilbert that he read the statement, make such corrections or changes as he deemed necessary and thereafter, if he was willing, to sign it. Mr. Gilbert and Mr. Caldwell went into a separate room to read the statement and after doing so, advised Mr. Schneider that Mr. Gilbert would not sign the statement until he had studied it further. Mr. Schneider stated that he wanted to keep the handwritten statement for his files but that he would have a copy typed and sent to Mr. Gilbert for his approval and signature. Thereafter, this was done and subsequently on September 24, 1952, Mr. Gilbert submitted to the regional office his own affidavit outlining his own version of the allegations made in the charge. The changes made were not of a substantial nature.

Allegation 4.—That Mr. Scolnik thereafter improperly used the original statement taken by Mr. Schneider during the course of the hearing and that over objection by employer's attorney, the original statement was admitted into evidence.

(a) During the course of the hearing, Mr. Scolnik did show to the witness the affidavit submitted and the original statement prepared by Mr. Schneider. Employer's counsel objected to the use of the statement stating that the affidavit alone should be used. The affidavit was received in evidence without objection. Contrary to Mr. Gilbert's testimony before the committee, the trial examiner sustained his attorney's objection to receipt of the original statement and it appears in the record as a rejected exhibit (Transcript 413).

Allegation 5.—That the employer filed a charge with the Board against the union "charging them with unfair labor practice for picketing us because we would not recognize the union without a legally conducted NLRB election. This petition was promptly dismissed."

(a) On September 11, 1952, the employer did file a charge against the union in a proceeding known as 20-CB-254. This charge alleged a violation of section 8 (b) (1) of the act by the teamsters in that the teamsters was picketing in an attempt to compel the employer to recognize it in the absence of an election. This charge was investigated and since the employer conceded that there had been no mass picketing, violence, or threats of violence, we concluded that there

was not sufficient evidence to warrant the finding of a violation of section 8 (b) (1) by the union pursuant to well established Board precedent. Accordingly, on October 3, 1952, the charge was dismissed.

Allegation 6.—That at the hearing the employer was tried before "what amounted to a kangaroo court"; that from the opening day of the hearing, "it was evident that we were not in a court of justice for the case against us was presented in such a way that we were presumed to be guilty before the case was tried"; that, in substance, the hearing consumed far too much time and placed the employer to an undue burden and expense.

(a) The proceeding was opened on January 15, 1953, before Trial Examiner Howard Myers. On the opening day the General Counsel was represented by Attorneys Robert J. Scolnik and Robert V. Magor. Mr. Magor was not present after the January 16 session. The employer was represented by Attorneys George H. Ackley and Kenneth C. McGuinness. In his case in chief the General Counsel called 10 witnesses. Each witness was put on the stand, examined by counsel for the General Counsel, and in most instances extensively cross-examined by counsel for the employer. When the General Counsel rested his case on January 16, 1953, the proceeding was recessed by mutual consent to February 2, 1953. On February 2, 1953, the employer commenced to put in his case in chief. In connection therewith, respondent called 11 witnesses. The defense rested on the last day of the hearing on February 5, 1953. Thereafter, General Counsel called 6 witnesses on rebuttal. All were short and consumed a total of less than 70 pages of transcript. The employer called four witnesses on surrebuttal. Following close of the hearing counsel for the employer filed a brief with the trial examiner. As noted above, no intermediate report has yet issued.

(b) A full examination of the entire transcript will reveal that the hearing was conducted in the manner in which hearings in the civil courts where issues are joined on the pleadings are normally conducted. Each side was represented and given full opportunity to examine and cross-examine witnesses. Each side was given opportunity to present any evidence that it considered relevant, stipulations of agreed facts were entered into, and the record is remarkably free of objections or acrimonious debate. Unfortunately, it is impossible to answer the general allegations made before the committee without fully examining the record as a whole. We submit, however, that full examination by any impartial party will support our contention.

(c) It is correct that the transcript did run 881 pages. This was only because the case was litigated fully by both sides. Presentation of the employer's defense and surrebuttal consumed considerably more than half of the transcript so that responsibility for length of record must be shared.

Allegation 7.—That "the method of questioning by the NLRB attorney would not have been considered ethical in any other court", that on many occasions "the trial examiner assisted Mr. Scolnik, the prosecutor, in the examining of witnesses"; that "at one point on cross-examination Howard Myers, trial examiner, deliberately tried to get one of the witnesses to say he heard me say something I had not said. Our attorney objected in such a manner that Mr. Myers finally apologized."

(a) A full examination of the record will disclose that the questioning by the Board attorney was not only ethical, but conformed with the kind of questioning normally to be expected in a court proceeding. Relatively few objections were made by employer's counsel to the General Counsel's questions and most of those which were made went to such matters as leading the witness or assuming facts not in issue. In most instances respondent's counsel, when noting objections, was sustained by the trial examiner and the questions were thereafter rephrased in a proper manner.

(b) The trial examiner, on numerous occasions during the course of examinations of both General Counsel and employer's counsel, did question the witness in an effort to clarify certain issues. He made it clear several times that if either party objected to his questions or his manner of questioning he should so state. No such objections were raised by the employer's counsel either at the hearing or in the brief. We submit that a fair reading of the transcript insofar as the trial examiner's engaging in questioning is concerned will disclose that he was assisting neither party but that he was engaging in the time-honored function of a trier of fact to endeavor to clarify the issues raised by the parties in an effort to obtain an understandable record.

(c) Mr. Gilbert alleges that the trial examiner "deliberately tried to get one of the witnesses to say he heard me say something I had not said." An examina-

tion of the transcript indicated that he had reference to the cross-examination of witness Gino Giovannoni. On page 671 of the transcript when Trial Examiner Myers was questioning this witness the following colloquy occurs:

"Mr. ACKLEY. May I interrupt a moment, Mr. Examiner?"

"Trial Examiner MYERS. Yes, surely."

"Mr. ACKLEY. In response to a question that you asked there, I don't believe that Mr. Gilbert said it was too bad. I think Mr. Fisk told Mr. Gilbert it was."

"Trial Examiner MYERS. I thought Fisk testified that when he told Mr. Gilbert the result of the election Mr. Gilbert said, 'That is too bad.' I might be mistaken. I thought he said that."

"Mr. ACKLEY. The record will show which it was."

"Trial Examiner MYERS. Absolutely. I am sorry if I misquoted the record."

"Mr. ACKLEY. That is the way I remember the record. I wouldn't say that it was misquoted, Mr. Trial Examiner, but as I remember the testimony it was that Mr. Fisk told Mr. Gilbert it was too bad."

"May we have a short recess now, Mr. Examiner?"

"Trial Examiner MYERS. Certainly."

("Short recess.")

"Trial Examiner MYERS. Gentlemen, are you ready to proceed?"

"Mr. ACKLEY. Yes."

"Trial Examiner MYERS. I have examined my notes and my recollection of the testimony of Mr. Fisk, and I believe I am in error when I included in my question that Mr. Gilbert made the statement, 'that is too bad' when he was informed by Mr. Fisk that the employees had voted in favor of the proposition at the show-of-hands election on June 19; and I apologize profusely for misstating the record."

It is submitted that contrary to the assertion of Mr. Gilbert that the trial examiner deliberately tried to get one of the witnesses to say something he had not said, the above quoted excerpt indicates clearly that at the most the trial examiner's memory was faulty on this occasion and that when it was called to his attention by respondent's counsel, he immediately checked his notes and rectified his error.

Allegation 8.—That "several of my employees were told by the attorneys for the NLRB that they would surely be granted pay for the time they had been off the job"

(a) This allegation indicated a lack of familiarity on the part of Mr. Gilbert with Board remedies and procedures. Part of the remedy for discrimination by an employer is to require him to make whole the discriminatee for losses he had suffered as a result of the discrimination. In the course of any proceeding the discriminatees may be advised as to this remedy and if settlement is being discussed, information may be sought as to probable earnings and interim earnings of the discriminatee so that the employer may be advised of his back pay liability, if any. Settlement was discussed between the parties in this proceeding but no agreement was reached. Both Magor and Scolnik emphatically aver that nothing was ever said to any employee at any time during this proceeding regarding back pay which exceeded the above outlined limitations.

Allegation 9.—That "one NLRB witness was put back on the stand twice to contradict the truthful testimony of three other men and myself."

(a) The only witness who was called back to the stand a second time was Gordon Leydecker. Leydecker was originally called on rebuttal by the General Counsel before respondent had completed his defense. On page 563 of the transcript, employer's counsel agreed Mr. Leydecker might be put on out of order because press of business elsewhere made it difficult for him to stay until the proper time for rebuttal. When he was put on the stand first on rebuttal, Mr. Leydecker testified concerning certain of the testimony that had been put in by respondent's witnesses. Subsequently, respondent put on several more witnesses who testified concerning certain conversations and activities by Mr. Leydecker. In order to rebut what these witnesses had said, the General Counsel called Mr. Leydecker a second time on the last day of the hearing. This was done without objection by employer's counsel.

Allegation 10.—In substance that witness Harvey Dickerson's testimony had agreed with Lawrence Gilbert's testimony but that Mr. Scolnik recalled him to the stand after promising him "several hundred dollars in back pay if he would change his testimony" and Mr. Gilbert sought to substantiate his testimony before the committee by submitting to the committee an affidavit allegedly sworn to by Harvey Dickerson stating, in substance, that if said witness would change his testimony, he would receive \$500 in back pay.

(a) Examination of Mr. Dickerson's testimony as a whole completely refutes the testimony given by Lawrence B. Gilbert before the committee.

(b) It is alleged in the complaint that on August 4, 1952, the employer discriminated against Harvey Dickerson in violation of section 8 (a) (3) of the act because of his activities on behalf of the union. Dickerson's testimony given in the General Counsel's case in chief was not contradicted by Lawrence Gilbert in any substantial particular except that Gilbert testified that Dickerson agreed that it would be all right if he (Dickerson) were not to be put back to work at the time had asked for a job but at some later unspecified time. Dickerson was called on rebuttal solely to testify on the issue of whether or not he agreed to deferring his reinstatement as testified by Gilbert. Dickerson testified on rebuttal that in response to Lawrence Gilbert's proposal as to his return, he had replied, "Well, if that is the way it is." Nothing further was brought out on rebuttal or sought to be brought out. At this point the employer's counsel took over and we hereinafter quote the cross examination and redirect examination of Dickerson in full as it appears in the transcript, commencing on page 842.

"CROSS EXAMINATION

"Q. (By Mr. Ackley.) Mr. Dickerson, have you had any conversation with Mr. Scolnik regarding what your testimony should be in this case?—A. Well, not exactly what it should be. He just asked me last night some questions, but he never told me to say anything.

"Q. Did he tell you that if you answered that you didn't have a job when you went back to the Gilberts it would mean \$600 to you?—A. Well, he said that if I didn't think that they wanted me to work—you know what I mean—if I thought that they laid me off on account of the union and the case was the other way I would get some pay. He didn't say how much.

"Q. Was any figure mentioned?—A. He was just counting up how many weeks I was off, and said it would amount up to around \$200 or \$300, something like that; maybe a little more. But I didn't know whether they laid me off on account of the union or not, because I joined the union. That was to be seen.

"Mr. ACKLEY. I think that is all.

"Trial Examiner MYERS. Any questions?

"Mr. SCOLNIK. Just another 1 or 2.

"REDIRECT EXAMINATION

"Q. (By Mr. Scolnik) In that conversation I had with you last night, Mr. Dickerson, didn't I tell you that if the final decision in this case was to the effect that the Gilbert Co. had unlawfully denied you a job, that you might have back pay coming?—A. That is right; yes, sir.

"Q. Depending upon how much money you had earned in the intervening time?—A. Yes, sir.

"Q. And I asked you what you had done in the intervening time and how much you had earned?—A. That is right.

"Q. And then I asked you how much you would have earned if you had continued to work for the Gilbert Co.?—A. Yes, sir, that is right.

"Q. And I tried to make some kind of computation as to what the difference might be?—A. Yes, that is right; you sure did.

"Mr. SCOLNIK. That is all.

"Mr. ACKLEY. That is all."

Examination of Mr. Dickerson's testimony as a whole and in particular the portions of his cross examination and redirect examination on rebuttal, above quoted, completely refute the testimony given by Lawrence Gilbert before the committee. First, it is quite clear that Mr. Scolnik made no attempt during the course of his direct examination on rebuttal to elicit any testimony from the witness other than testimony relating to his alleged agreement with what Mr. Gilbert said and to which Dickerson had not testified on direct examination, and that he never at any time sought to get Dickerson to change any testimony previously given. Second, under oath, as noted above, on cross examination, when asked what Mr. Scolnik told him with regard to his testimony, the witness stated positively, "He just asked me last night some questions but he never told me to say anything." Third, on redirect examination quoted above, Dickerson's sworn testimony makes quite clear that the only conversation he had with Scolnik concerned the back pay remedy if a case were established. To attempt to establish so serious a charge by such a misrepresentation of the record appears to us shocking in the extreme.

THE CAPITAL SERVICE CASE

This committee has heard about this case from two sets of witnesses. On March 19, 1953, testimony was presented by G. Brashears, president of Capital Service, and his attorney, Carl Gould. This was followed, on April 17, by the testimony of John C. Stevenson, the attorney for Bakery Drivers' Union, No. 276 of the Teamsters, the union involved in the case.

Mr. Brashears and Attorney Gould testified in substance that the Board, and particularly the regional office in Los Angeles, which is under the supervision of the General Counsel, refused to do anything to assist the Company in the prosecution of its charges that the Teamsters had violated section 8 (b) (4) (A) of the National Labor Relations Act until the company had obtained effective relief against the union in the Superior Court of California; and that, thereupon, the General Counsel's Office and the Teamsters colluded to deprive the company of its State court remedy.

The facts are different from what Messrs. Brashears and Gould have represented. The General Counsel, and his agents both in the region and in Washington, did everything they could to give the company the relief to which it was entitled under the law; when the General Counsel decided to proceed on the company's charges, he was not even aware of the fact that the company had that same day obtained an injunction from the State court, and so, obviously, he could not have been influenced by that fact; and the State court injunction, far from reviving the General Counsel's interest in the case, as Messrs. Brashears and Gould say, actually served to retard it briefly until the impact of that injunction and the agency's responsibility in the situation could be studied.

The situation briefly was this: The Congress had established in the Federal law a system of collective bargaining for industry which affected interstate commerce, and in the public interest had laid down rules which each side was to follow in their labor disputes. Certain economic weapons were privileged to be used by one side or the other; other economic weapons were outlawed for one side or the other. In this way, Congress sought to balance the strength of the competing sides, and announced the "rules of the game." The State court, however, had asserted power to lay down its own and different rules for the same labor controversy. In these circumstances, there seemed to be a conflict between the Federal system of regulation and that of the State, and I so reported to the Board.

It should also be emphasized at the outset that the company made the identical allegation of misconduct against the General Counsel and the regional office in the litigation in the Federal District Court for the Southern District of California. There District Judge Westover, after affording Attorney Gould full opportunity to present any evidence that he had to support this contention (transcript of proceedings in cases Nos 14141-HW and 14142-HW, District Court, Southern District, California, pp 303, 338, 339, 400-401, 409), concluded that: "There is no evidence of any misconduct" (tr 559). Indeed, Attorney Gould, himself, conceded in the district court that there was "nothing except argument" to indicate that the Board was not acting in complete good faith, and that his contrary assertion was "a make-weight only" (tr 370, 369).

The detailed facts which support these assertions are as follows:

1 *From February 21 to the end of March 1952, the company vigorously pressed for a Board remedy.*—On February 21, 1952, the company filed a charge with the regional office in Los Angeles alleging that since February 4, 1952, Bakery Drivers' Union, No. 276 of the Teamsters, and certain other labor unions had been engaging in conduct which was violative of section 8 (b) (4) (A) of the National Labor Relations Act. This conduct, which was alleged to affect interstate commerce within the meaning of the act, consisted of picketing certain retail food stores handling Capital's bakery goods, with placards appealing to the public not to purchase these products because Capital was nonunion. Upon receipt of the charge, it was assigned, in accordance with usual procedure, to field examiners for investigation. Between February 25 and March 5 the company supplied these examiners with 10 affidavits relating to incidents alleged to support the charge of violation, and certain data on the commerce of the company.

At this point, it should be explained that section 8 (b) (4) (A) of the act, the only section mentioned in the company's charge, requires two elements before a violation is established. Not only must it be shown that an object of the union activity is to force a cessation of business relations between a neutral employer and the employer with whom the union has its basic dispute (in this case Capital Service), but also that the means by which this objective

is sought to be attained has involved the inducement and encouragement of employees of the neutral employer to strike or cease work. The proof of employee inducement is difficult in the situation presented here, which involved a picket line at retail stores ostensibly addressed to members of the public. As Senator Taft specifically pointed out in the course of the legislative history of section 8 (b) (4) (A), that provision was not intended to proscribe a union appeal "to the general public not to buy products of nonunion manufacturers" (93 Congressional Record A3370). Accordingly, in applying 8 (b) (4) (A) to a consumer picketing situation, the Board has required affirmative evidence of inducement of employees, as for example, proof that the pickets have left the line and specifically urged drivers to cease deliveries, or that, instead of patrolling in front of customer entrances, the pickets have gone to entrances where employees of suppliers make deliveries.⁴

The 10 affidavits supplied by the company at the start of the region's investigation contained three possible incidents of such employee inducement as would be prohibited by section 8 (b) (4) (A). The remaining, or bulk of the incidents furnished in support of the company's charge either involved instances where a mere picket line at the customer entrance turned away drivers, or those where the pickets had induced employers (i. e., made demands upon managerial personnel of the stores) rather than employees.

On March 17, 1952, a meeting was held in the regional office at the request of Attorney Gould, wherein the result of the investigation thus far was summarized. The elements of a violation of section 8 (b) (4) (A) just outlined were explained to Mr. Brashears, and it was explained why the bulk of the incidents that had thus far been presented were inadequate. It was also pointed out that the data thus far uncovered respecting the impact of the union activity upon interstate commerce appeared to be insufficient to warrant the exercise of jurisdiction, as a matter of policy.⁵ The company representatives made no complaint concerning the speed, thoroughness or impartiality of the investigation up to that stage, and indicated that they would undertake to fill in the gaps which were militating against the institution of formal action.⁶

At this meeting, the regional office learned for the first time that the company, at about the same time that it had had filed the charge with the regional office, had also brought suit in the Superior Court of California at Los Angeles. Attorney Gould pointed out that this action was based on a claimed violation of the California Antitrust Act rather than on any theory of a labor dispute, viz, that the activity of the unions at the retail markets was not for organizational purposes but in furtherance of a conspiracy with the bakery competitors of Capital Service to deprive the latter of its sales outlets in the retail markets. On this theory, the State suit did not appear to conflict with matters which were exclusively the concern of the Board, and Gould was so advised. He replied that the suit had been under submission for some time and that he did not think the State court would act favorably to his client.

Thereafter, between March 17 and 28, 1952, the Board's files reveal that telephone calls were received virtually daily from the company and its attorneys with respect to new incidents, all of which were promptly run down by the region's investigators. Some of these incidents appeared to involve the type of employee inducement proscribed by section 8 (b) (4) (A) and, together

⁴ The January 30, 1953, opinion of the U. S. Court of Appeals for the Ninth Circuit in *Capital Service, Inc. v. N. L. R. B.*, discussed subsequently, affirms the Board in this respect. It specifically holds that the consumer picket line herein was violative of 8 (b) (4) (A) only to the extent that it was carried on "at the rear entrances of the retail stores where the bakery products were handled in and out of the stores" (slip op. pp. 5-6).

⁵ There was never any question that the business of Capital Service had a sufficient impact on commerce to subject it to the Board's jurisdiction as a matter of law. The Board however, has found that, to best effectuate the policies of the act, it cannot assert the full measure of its legal jurisdiction, and, accordingly, has formulated certain yardsticks for guiding it in determining in which cases as a matter of policy, it will assert jurisdiction. These standards are largely of a quantitative matter, and in applying them where a secondary boycott is involved, the volume of business of both the primary and secondary employers is added together. See 16th Annual Report of the National Labor Relations Board (Government Printing Office 1952) pp. 15-84.

At the stage reached by the Capital Service investigation on March 17, the information uncovered respecting the volume of business of Capital, plus that of the retail markets involved in the instances which had thus far been found to violate the act, did not satisfy the Board's standards.

⁶ Under secs 10 (b) (1) and 3 (d) of the National Labor Relations Act, if the investigation of an 8 (b) (4) (A) charge discloses that it has prima facie merit, the General Counsel of the Board is empowered to issue an unfair labor practice complaint, and he is required to petition the appropriate Federal district court for an injunction against such conduct pending final Board determination of whether unfair labor practices were in fact committed.

with those previously uncovered, now indicated that the illegal activity was of sufficient magnitude to satisfy the Board's jurisdictional yardsticks. The regional office closed its preliminary investigation of the charge at the end of March, and, as is customary, a report was then submitted to the General Counsel's Office in Washington so that it could determine whether injunction proceedings should be instituted under section 10 (1) of the National Labor Relations Act.

Thus, from the time the company's charge was filed (February 21) until the preliminary investigation thereof was completed, the regional office diligently tracked down every piece of evidence which the company offered in support of its charge. The investigation took as long as it did, not because of any laxity on the part of the region, but because of the company's inability promptly to furnish adequate evidence that the union activity had taken the form proscribed by section 8 (b) (4) (A). As soon as the company supplied this information, the region was able to finish its investigation and send the case to Washington for a decision.

2. *The General Counsel decides to seek an injunction; thereupon the State court issues its injunction based solely on labor-relations grounds*—On April 2, 1952, the Injunction Branch of the General Counsel's Office in Washington, upon review of the region's investigation report, recommended to the General Counsel that injunction proceedings under section 10 (1) of the act should be instituted. The consumer picket line, insofar as it was confined to the customer entrances of the stores, was not violative of section 8 (b) (4) (A) and thus would not be subject to a 10 (1) injunction; however, since the instances of delivery entrance picketing and other direct inducement of employees—which were violative of 8 (b) (4) (A) and enjoined—involved responsible business agents of the union, it was felt that they were serious enough to warrant formal action. The recommendation specified that 10 (1) proceedings be instituted only against teamsters local 276, and that no action be taken against the remaining unions covered by the charge; this was because there was no evidence (other than the wording of the signs themselves) which linked the other unions with the illegal activity. The next day, April 3, the General Counsel adopted the recommendation of the Injunction Branch and authorized the filing of a 10 (1) injunction petition in the appropriate Federal district court.

The same day (April 3), Judge Swain, in California, issued an opinion in the State court suit which Capital had brought, holding that a preliminary injunction should issue enjoining all of the picketing at the retail markets—at the customer entrances as well as at the delivery entrances. Obviously, the General Counsel was unaware of Judge Swain's ruling at the time of his decision to proceed with a 10 (1) injunction. In his opinion, Judge Swain completely rejected the restraint of trade theory on which the suit was based, finding that the picketing was purely an organizational effort on the part of the unions involved.⁷ He rested his decision solely on the ground that such secondary picketing was contrary to the public policy of California. Judge Swain conceded that he was "pioneering," for neither the California statutory or common law outlawed the activity; he asserted, however, that the Superior Court was free to declare State public policy, and that—after balancing the interests of labor, management, and the public—he had come to the conclusion that secondary picketing in labor disputes was socially unjustified. The injunction based on Judge Swain's opinion was entered 4 days later, on April 7.

3. *The abortive settlement agreement; Washington's evaluation of the effect of the Swain injunction*.—Contrary to Attorney Gould's assertion, a settlement agreement had not even been mentioned, let alone executed, up to this point. On April 8, the chief law officer in the regional office in Los Angeles, upon learning that Washington had authorized the institution of 10 (1) proceedings based upon the company's 8 (b) (4) (A) charge, met with attorneys for the union and, after acquainting them with the Washington decision, suggested that they enter into an agreement settling the charge. This is in accordance with the requirements of section 101.7 of the Board's rules, which provides that an opportunity for informal settlement should be accorded before formal proceedings are instituted, and section 5 (b) of the Administrative Procedure Act imposes a similar requirement. The Union representatives agreed to execute a settlement agreement. They pointed out, however, that the State court had just issued a broad injunction covering, in part at least, the precise conduct encompassed by the settlement; accordingly, they specifically requested that the Board take steps to have the

⁷ The Swain injunction covered not only teamsters local 276, but also the other unions listed on the signs carried by the pickets.

State court injunction vacated That same day, the regional office transmitted the partially executed settlement agreement to Washington for approval, as is customary, and at the same time advised of the unexpected development in the State court action. This was Washington's earliest opportunity to learn what had transpired in the State court.

On or about April 14, the General Counsel decided to reject the proposed settlement agreement for several reasons. First, it was inadequate because it contained no requirement that the union post its provisions at union meeting halls or at the places of business of the secondary employers; it did not provide for notification to members of the union that the pickets were under instructions not to stop them from making deliveries; and the agreement was too narrow in that it covered only the employees of specified markets, and not, as is customary, employees of any other employer. Moreover, it was concluded that, as long as the State court injunction involving the same conduct remained in effect, the agreement in effectuation of Federal policy could "settle" nothing. It should be emphasized that at no time was the proposed settlement agreement ever approved by the company, even though its terms and the union's willingness to agree to these terms were communicated by the regional office to Mr. Hyman Smith, one of the company's attorneys.

The rejection of the settlement agreement still left the question whether to carry on with the 10 (1) proceeding previously authorized. In answering this question, it was necessary, of course, to evaluate the effect of the State court injunction. It was perfectly clear that, insofar as that injunction enjoined picketing at the delivery entrances, it was remedying conduct which was an unfair labor practice under section 8 (b) (4) (A) of the National Labor Relations Act. Since only the Board is empowered to remedy unfair Labor practices and to seek injunctive relief against them (see *Amazon Cotton Mills Co. v. Textile Workers Union*, 167 F. 2d 183 (C. A. 4))—and, indeed, section 10 (a) of the National Labor Relations Act specifically provides that the Board's power "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise"—it followed that the State court decree, in part at least, infringed on the Board's exclusive jurisdiction. Moreover, an "invalid" State court injunction could hardly "excuse" the General Counsel's Office from seeking the only injunctive remedy which Congress thought proper for such conduct, that provided in section 10 (1) of the National Labor Relations Act.

Accordingly, the General Counsel's Office concluded that it was still appropriate and necessary to proceed with the 10 (1) suit decided upon before the State court had acted. And, to insure that any ruling which the Federal district court might make in this suit would be effective and conclusive as to the rights and responsibilities of the parties to the labor dispute covered by the company's unfair labor practice charge, it was further decided that the 10 (1) suit should be coupled with an independent suit to nullify the State court decree. Otherwise, the situation would occur where a State was prohibiting and punishing employees for exercising rights in connection with consumer picketing which the Federal Government in section 7 of the act seemed affirmatively to protect.

Accordingly, on or about April 17, 1952, the General Counsel requested the Board for authority to institute, along with the contemplated 10 (1) injunction suit against the union, a suit against the company for the purpose of nullifying the State court injunction which it had obtained.

4. *The State court declines to vacate its injunction voluntarily; Capital Service no longer desires Board relief.*—On April 23, the Board gave its approval to the course of action recommended by the General Counsel. Accordingly, on April 25, when the State court had set for hearing a union motion for reconsideration, the chief law officer in the Los Angeles office appeared in the State court for the purpose of acquainting the court with the Board's position. The State court, however, refused to hear any argument on the question whether its injunction purported to encroach on or conflict with the Federal jurisdiction under the Federal act.

Both before and after the State court hearing, the region's chief law officer advised Attorney Gould that Washington had authorized the institution of 10 (1) proceedings against the union based on Capital Service's 8 (b) (4) (A) charge, and also the filing of a suit against the company to nullify the effect of the State court injunction. When the State court refused to consider the conflict question, attorneys on the General Counsel's staff proceeded to prepare the necessary pleadings and legal memoranda required for the institution of the two actions

in the Federal district court. Just before these suits were about to be filed, Attorney Gould requested a conference in the regional office.

At this conference, which was held on May 12, 1952, Gould asked leave to withdraw the Company's 8 (b) (4) (A) charge, indicating that he no longer desired the remedy and regulation prescribed by Federal law. The regional director denied this request, pointing out to Mr. Gould that, for the reasons previously outlined, the Agency could not regard the State court injunction as relieving it of its obligation to apply the Federal law to the labor dispute in question. It was further explained to Mr. Gould that, in any event, the mere withdrawal of the 8 (b) (4) (A) charge would not, in the Agency's view, make the State court injunction any less invalid. Irrespective of whether an 8 (b) (4) (A) charge were on file, the defect in the State injunction would still exist.

The regional director's refusal to permit Capital Service at this time to withdraw its 8 (b) (4) (A) charge was entirely consistent with the policy decisions previously made by the Board and the General Counsel in Washington respecting the invalidity of the State court decree, and of the necessity for continuing to seek a remedy under the National Labor Relations Act. Indeed, all of the region's actions in this case were in accordance with either customary procedures and the specific directions of the General Counsel's Office in Washington. Accordingly, the mere fact that the regional director declined to dismiss the Company's charge does not, as Attorney Gould has suggested, evidence any improper motive on the part of the regional office.

Shortly after the May 12 conference, the two Board suits were filed in the United States District Court for the Southern District of California.

* * * * *

In sum, these facts show that, contrary to the Gould-Brashears testimony before this committee, Capital Service's 8 (b) (4) (A) charge was not "dead" when the decision to secure a 10 (1) injunction thereon was made. When this decision was made (April 2 and 3), the case had not been settled (nor was it ever settled); the Stevenson letter of January 29 had not, in the company's view, removed the need for Board relief; and the company, entertaining no doubts as to the Board's jurisdiction or as to the fact that violations of the National Labor Relations Act had been and were still being committed, was pressing daily for Board action. Thereafter, the superior court in Los Angeles, on the theory that it could declare public policy for the State of California, found that all of the picketing here was contrary to such policy and issued a blanket injunction. The General Counsel and the Board, upon careful analysis of this injunction, concluded that it had undertaken to regulate and prohibit conduct which the National Labor Relations Act had apparently protected and closed to State regulation; that the State court decree was therefore invalid; and that the policies of the National Labor Relations Act would best be served by proceeding with the contemplated 10 (1) injunction suit and at the same time seeking to vacate the State injunction.⁸

Only when it was learned that the Board—while on the one hand, moving for 10 (1) relief—would also undertake to nullify the seemingly conflicting State action, did the company suddenly change its position; it now urged that the violation of the National Labor Relations Act had ceased and that it should be permitted to withdraw its 8 (b) (4) (A) charge.

The results of the Federal court litigation, thus far, confirm the propriety of the agency's course of action. On June 2, 1952, Federal Judge Westover entered orders granting the Board the 10 (1) injunctive relief which it had sought against the union, and the relief against the State court decree sought in the companion suit against the Company. In the findings of fact and conclusions of law made in the 10 (1) case, the district court specifically held that the evidence established reasonable cause to believe that the union had violated section 8 (b) (4) (A) of the act; that said illegal activity had a sufficient impact on commerce to confer jurisdiction on the Board and the court over the activity; and that it could be reasonably anticipated that, unless restrained, the union would continue to violate section 8 (b) (4) (A) and cause irreparable injury to the policies of the National Labor Relations Act and the public welfare.

⁸ The necessity for Board intervention was dramatized by the broad base on which the State injunction rested, viz, the power of a local judge to formulate by himself labor-relations policy for businesses within the State, even those which may affect interstate commerce. On this theory, any State judge—by simply announcing a judge-made public policy against any conduct of a union, an employer, or an employee—could effectively oust the Federal Government from carrying out the congressional policies enunciated in the National Labor Relations Act and the other titles of the Labor-Management Relations Act.

In the findings of fact and conclusions of law in the suit against the company, the district court held, *inter alia*, that all of the union's activities at the retail markets—those which were violative of 8 (b) (4) (A) as well as those which were not—were peaceful concerted activities engaged in pursuant to a labor dispute with Capital Service, that all of these concerted activities were in the area regulated exclusively by the National Labor Relations Act and closed to State regulation; that, in the circumstances, the State superior court was without jurisdiction to apply State law to the labor dispute; and that a preliminary injunction was necessary and proper to avoid further irreparable impairment of congressional policies and to effectuate the decree entered by the Federal court under Federal law in the 10 (1) proceeding.

The order entered in the 10 (1) case was in the usual form, enjoining the union, pending Board determination of the unfair labor practice case, from engaging in the acts which there was reasonable cause to believe were violative of Federal law. The order entered against the company restrained it, until further order of the court, from enforcing or in any other manner giving continued effect to the preliminary injunction that had been issued by the State superior court on April 7, 1952, and from further proceedings in that court, the effect of which would be to enjoin the unions involved therein from engaging in federally regulated concerted activities in the labor dispute with Capital Service. Contrary to Attorney Gould's assertion in his testimony before the committee, the order did not require the company to withdraw its suit in the State court. Indeed, Board attorneys conceded in open court that the decree would neither preclude the parties in the State court from appealing Judge Swain's ruling through the State court system, nor prevent Capital Service from continuing the State suit for the purpose of seeking to establish (contrary to Judge Swain's finding of April 3, 1952) that more was involved than mere organizational picketing, *i. e.*, a combination in restraint of trade by the labor unions and the retail markets (district court transcript, pp 473, 489-491).

The district court reached these decisions after a hearing which lasted from May 29 through June 2, 1952, and which consumed 569 pages of typewritten transcript. All sides were afforded full opportunity to argue at length on the important legal issues, and extensive briefs were submitted. Capital Service was even accorded the unusual privilege of being permitted to intervene in the 10 (1) proceeding as a party respondent, for the purpose of defeating the very charge which it had filed and pressed until it discovered that the State judge was willing to grant a broader injunction. Despite the vigorous position that Capital Service had taken before the Board in March 1952, urging Federal jurisdiction and the need for relief under Federal law, Attorney Gould now argued in the Federal court that the Board never had jurisdiction of the company, and that all danger of illegal conduct on the part of the union had subsided as far back as February 29, 1952, when Capital received assurance from the union's attorney that deliveries would not be stopped. Finally, contrary to Attorney Gould's further allegation before the committee, the union defended the 10 (1) action: it filed an answer denying that it had engaged in any conduct violative of section 8 (b) (4) (A) of the act and praying that the Board's application for preliminary injunction be denied; at the hearing, it diligently pressed this contention. The union, however, made it perfectly clear that, absent the issuance of an injunction by the district court, it would continue to resume the pattern of picketing which it had been following, including picketing of delivery entrances.

No appeal was taken from the district court's 10 (1) injunction order, although the company, being a party defendant, had this legal vehicle available to it for pressing its newly acquired view that the Federal law did not apply to it, and that no violations of 8 (b) (4) (A) had been engaged in by the union. Thereafter, a hearing on the 8 (b) (4) (A) charge was heard before a trial examiner of the Board at which the company, although afforded an opportunity to participate in support of its charge, declined to appear. The trial examiner issued an intermediate report substantially confirming the findings of the district court in the 10 (1) proceeding, and on September 11, 1952, the Board issued its decision and order in the case, which in effect adopted the trial examiner's recommendations. The Board found that the union's picketing at the delivery entrances of the stores constituted inducement and encouragement of employees within the meaning of 8 (b) (4) (A), and thus violated that section. The Board's order required the union to cease and desist from inducing or encouraging employees, "by picketing or related conduct," from forcing the retail stores or any other employer to cease handling the products of Capital Service.

In the meantime Capital Service, although it did not take an appeal from the 10 (1) order, did appeal the order entered by the district court nullifying the effect of the State court injunction. After filing its notice of appeal, Capital Service requested the United States Court of Appeals for the Ninth Circuit to stay the district court's order pending disposition of the appeal. After hearing argument on this motion, the court of appeals denied a stay, but provided that, in the interest of expedition, the appeal would be submitted to the court on the basis of briefs. All parties submitted briefs.

On January 20, 1953^{fi} the court of appeals handed down an opinion which upheld the order of the district court nullifying the effect of the superior court injunction. The court agreed with the position of the Board and the court below—and thus rejected the contrary position of Attorney Gould—that all of the activities covered by the State superior court injunction were within the area regulated by Federal law. The court of appeals further found—in agreement with the position of the Board and the court below, and contrary to the position taken by Attorney Gould in that court—that the reason for preemption of that portion of the union's picketing which occurred at the delivery entrances of the stores was that such activity constituted an unfair labor practice under section 8 (b) (4) (A) of the National Labor relations Act. The court of appeals went on to hold that the reason for preemption of the remainder of the consumer picketing was that it constituted an unfair labor practice within the meaning of section 8 (b) (1) (A). In this respect, only, did the holding of the court of appeals differ from that of the court below and the position of the Board therein; that is, the position of the Board and the court below was that consumer picketing per se, though not an unfair labor practice, was nevertheless preempted either because it was affirmatively protected under section 7 of the National Labor Relations Act, or an activity which Congress had decided to leave to the free play of economic forces.

None of the parties, including Attorney Gould, had ever argued (either in the voluminous briefs submitted to the court of appeals or in the district court) that consumer picketing per se fell under the ban of section 8 (b) (1) (A) of the National Labor Relations Act. Indeed, the Board had consistently been interpreting section 8 (b) (1) (A) as not encompassing such peaceful persuasion incidental to a union organizational drive, and this interpretation appeared to be amply supported by the legislative history of the Section (see the remarks of Senator Taft at 93 Congressional Record 4430, 4436). The Board therefore felt compelled to petition the court of appeals for rehearing on the 8 (b) (1) (A) aspect of its decision, and the court granted the Board's petition and heard argument on this question on March 20, 1953. Both the Board and Capital Service submitted extensive briefs on the 8 (b) (1) (A) question, and the court still has the matter under advisement.

RICHFIELD OIL CORP.

(Cases Nos. 21-RD-52, 21-RD-54, 21-RD-64, 21-CC-92)

On March 26, 1953, Mr. David Guntert, counsel for the Richfield Oil Corp., Los Angeles, Calif., testified concerning the above cases. He stated that there had been long delays in the processing of the decertification cases and that at the hearings on cases Nos 21-RD-52 and 21-RD-54 evidence was permitted going to the fact that there had been satisfactory bargaining in a companywide unit whereas evidence offered by the petitioners that such bargaining was unsatisfactory was rejected. In the secondary boycott case Mr. Guntert testified that the regional office did not issue a complaint until almost 2 months after the picketing complained of had ceased. Further, Mr. Guntert indicates that he had been subjected to vilification in the course of this proceeding.

DECERTIFICATION CASES

1. The petition in case No. 21-RD-52 was filed on October 21, 1948, and on the following day the petition in case No. 21-RD-54 was filed. At the time these petitions were filed there was pending before the regional office a charge by the Oil Workers' International Union (case No. 21-CA-239) which alleged among other things that Richfield had refused to bargain collectively with the union. The Oil Workers' International Union was the incumbent organization in both of these decertification cases. Furthermore, during this period the Oil Workers' International Union was engaged in a strike which affected all of the major oil-producing and oil-refining companies on the west coast.

It had long been a practice and a policy of the Board that representation matters would not be investigated during the pendency of unfair labor practice cases unless the charging organization waived the unfair labor practices as a basis for objecting to the representation election. One of the major reasons for this policy was to afford employees the opportunity to participate in representation elections free from the taint of unfair labor practices. Because of this policy the regional office could not investigate the decertification petitions until the unfair labor practice charge had been disposed of. On November 12, 1948, the unfair labor practice charge was withdrawn, and so the decertification proceeding could go forward.

On November 15, 1948, the petition in case No. 21-RD-64 was filed and thereafter all three petitions were investigated. The regional office felt that the units described in cases Nos. 21-RD-52 and 21-RD-54 might well be inappropriate. However, in view of the entire question it was decided that the parties were entitled to a hearing so that a complete record could be made and the issues decided by the Board itself. When the investigation was completed, and before a notice of hearing could be issued, a new charge was filed against the company on December 17, 1948 (case No. 21-CA-308). This charge alleged that one employee working at the company's oil sales and distribution office in Wilmington, Calif., was discharged because of his unwillingness to cross the picket line.

After conference with Mr. Guntert and with Mr. Sweeney, the company's personnel director, the regional office agreed with the company's view that each of the decertification cases should be processed despite the pendency of the unfair labor practice charge because the discharged employee had not been employed in any of the bargaining units involved. Accordingly, on December 27, 1948, the regional office recommended to the General Counsel that an exception to the waiver policy be made in these cases. In the meantime a series of new unfair labor practice cases were filed.⁹ All of these cases involved the discharge of employees in the bargaining unit affected by cases Nos. 21-RD-52 and 21-RD-54, and, as a consequence, it was impossible again to proceed with those two cases.

On January 20, 1949, the regional office asked the General Counsel for further consideration of the region's recommendation to proceed with case No. 21-RD-64. The General Counsel advised the region to proceed since there was no close relationship between that bargaining unit and the employees affected by the charges. On March 10, 1949, a notice of hearing was issued in case No. 21-RD-64. After the hearing, but before the Board had decided the matter, the Oil Workers' International Union notified the Board that it disclaimed any further interest in representing the employees in the bargaining unit sought to be decertified. As a consequence, in accordance with its usual practice, the Board dismissed the petition on June 7, 1949.

On June 2, 1949, immediately after the dismissal or settlement of all of the pending charges listed in footnote 1, a notice of hearing was issued in cases Nos. 21-RD-52 and 21-RD-54. After due consideration, the Board dismissed both of these petitions upon the conclusion that the unit sought to be decertified was inappropriate for such purposes. The Board's decision was dated October 19, 1949.

It is clear from the above that the delays in handling of the decertification cases was attributable entirely to the union's refusal to waive its unfair labor practices pending concurrently with the petitions. Throughout this period the regional office worked very closely with company counsel, and in fact Mr.

⁹ See the following table

Case number	Date filed	Disposition	Appeal denied
21-CA-336	Jan 18, 1949	Dismissed May 23, 1949	Aug 10, 1949
21-CA-337	do	do	Do
21-CA-338	do	do	Do
21-CA-339	do	do	Do
21-CA-340	do	do	Do
21-CA-341	do	do	Do
21-CA-355	Jan 28, 1949	Settled May 26, 1949	
21-CA-356	do	Dismissed Mar 30, 1949	July 6, 1949
21-CA-393	Mar 4, 1949	Dismissed May 10, 1949	Do
21-CA-394	Mar 3, 1949	Dismissed May 24, 1949	Aug 10, 1949

Guntert agreed with the regional office that it was impossible to proceed with cases Nos. 21-RD-52 and 21-RD-54 in view of the unwaived charges.

2. Mr. Guntert testified that hearing officer Helbling, in conducting the hearing, admitted evidence tending to show a successful collective bargaining relationship on an overall unit while excluding evidence tending to refute this contention.

An examination of the transcript of the hearing shows that Mr. Guntert's contention is contrary to the facts. The matter came up in the hearing during the examination of witness Montgomery (Tr., pp. 257-261). Several questions were asked of Montgomery by counsel for the petitioner in an attempt to establish that the collective bargaining relationship was not harmonious. Several objections by counsel for the union were sustained because the opinion of the witness was sought, or because the witness was asked for conclusions. This led to the following exchange:

"Mr. PARSONS: We have a right to develop how this bargaining has proceeded. That is one of the factors we are interested in, and under the law these men have certain rights, and if this bargaining has not worked fairly and effectively and if one group is dominating another, that is a factor which the Board in all equity, and they are charged with doing equity, should take into consideration in carving out a fair and appropriate unit

"Hearing Officer HELBLING. You can develop evidence along that line, Mr. Parsons, but I think you have to do it on proper questions, though.

"Mr. PARSONS. The facts are here and we will show it at the appropriate time.

"Hearing Officer HELBLING. You may proceed, Mr. Parsons." (Tr., pp. 260-261.)

It seems quite clear from the above quotation from the record that the hearing officer's ruling went to the form of the question and that the petitioner was assured that evidence to show an unharmonious bargaining arrangement was admissible.

SECONDARY BOYCOTT CASE

The charge in this matter was filed on Friday, February 24, 1950. Apparently the charge was actually received in the office late in the afternoon, as the affidavits of service indicate that some of the respondents were served on the 24th and an additional group was served on Monday, the 27th. The first evidence supporting the allegation was received on or about February 27, and on March 1, examiner Yager, to whom the case was assigned, made a field trip to the area in which the dispute existed (Bakersfield) and took affidavits of numerous witnesses. On Friday, March 3, examiner Yager was advised by Mr. Guntert that the Superior Tank and Construction Co., the primary employer, had completed work on the Richfield property and had moved its men and material off it, but that the unions were still maintaining their picket lines. The examiner suggested to Mr. Guntert that he inform the labor unions of the above facts. Mr. Guntert advised that he had not, but that he would do so. On the same day, the examiner talked with Arthur Garrett, attorney for the union, and with one of its officials, and they advised that they would withdraw the pickets. Still later on the same date, Mr. Guntert called and advised that he had wired the unions, informing them of the facts, and that the pickets had been removed. On March 6, Mr. Guntert again called and advised that all subcontractors, with the exception of one, had returned to their work on the Richfield property. On March 3, therefore, all secondary picketing had ceased and the primary issue was whether or not the regional office should proceed to issue complaint. Nevertheless, on March 21 it was decided to request an injunction attorney from Washington since the regional office had learned in the interim that additional work was to be performed by Superior for Richfield, and anticipated that the dispute might be renewed. On March 28 the General Counsel concurred in the regional office's recommendation that complaint issue and injunction proceedings be instituted.

On March 29, 1950, field examiner Yager telephoned Superior Tank and Construction Co. and was advised by superintendent Vaughn that Richfield had canceled Superior's contract with reference to the remaining work and that all of Superior's work on Richfield property had been completed.

Notwithstanding the fact that Superior had no further work on the Richfield properties a petition for a section 10 (1) injunction was filed with the court so that if a violation of the act recurred, injunctive relief could be obtained without delay.

Mr. Guntert stated that he had been subjected to "vilification" during the hearing on the complaint which followed. We do not believe Mr. Guntert meant to leave the impression he had been vilified by regional personnel. From Mr. Guntert's remarks and from the records in the case it seems clear that Mr. Guntert was referring to statements made by the respondent's witnesses during the trial of case No. 21-CC-92. As a matter of fact, the regional office's trial attorney protected the interests of Richfield throughout the entire trial. As can be seen from the region's exceptions and brief filed with the Board, the region excepted to the trial examiner's ruling excluding full participation of Richfield's counsel in the case. The region's position was sustained by the Board. There is nothing to indicate any improper treatment of Mr. Guntert by Board personnel at any time during any of these proceedings, and no doubt Mr. Guntert did not mean to so imply.

GENERAL PAINT CORPORATION

(Case No. 21-CC-112)

Testimony about this case was given on March 13, 1953, by Mr. Harold C. McClellan, president of the Old Colony Paint & Chemical Co., Los Angeles. The gist of this testimony is that, early in 1951, the AFL paint makers union, in an effort to organize the employees of General Paint (a nonunion firm in the Los Angeles area), instituted a secondary boycott of the company's product. Thereupon, the company filed unfair labor practice charges with the Board's regional office in Los Angeles—alleging a violation of sections 8 (b) (4) (A) and (B) of the Labor-Management Relations Act of 1947—and, based upon such charges, the Board instituted 10 (1) injunction proceedings. However, Mr. McClellan said, when the union subsequently agreed to settle the case, the Board, over the company's protest, accepted such settlement and discontinued its injunction suit. The union, nevertheless, continued to boycott General Paint's product, ultimately causing the company to capitulate, according to Mr. McClellan.

In the first place, it should be noted that the settlement agreement disposing of the charges was not entered into over the company's protest. The agreement, shows on its face, that the company's assent was manifested by the signature of R. W. Lund, its attorney and an experienced labor relations counselor. This agreement, which was executed on May 1, 1951, required the paint makers union, and all of the other unions charged to have engaged in conduct violative of the National Labor Relations Act, to post, in conspicuous places, notices to the effect that they would no longer induce or encourage employees of secondary employers to cease working on projects using the products of General Paint, for the purpose of cutting off business relations with that company or forcing it to recognize or bargain with any of these unions.

The agreement recited that, upon the union's showing of compliance with its terms, the Regional Director would discontinue the formal proceedings previously instituted. To determine whether compliance had occurred, as Mr. McClellan concedes in his testimony, the regional office "retained jurisdiction and kept an eye on" the agreement after it was executed. Thus, on or about May 16, an agent of the regional office, upon finding that some of the notices had not yet been posted, undertook to see that this omission was remedied. Similarly, on or about May 24, when Attorney Lund complained that some union painters had not reported for work at a project using General Paint products, the regional office immediately undertook to investigate the matter. From that date on, no complaints were ever received from the company nor Attorney Lund respecting the unions' noncompliance with the settlement agreement.

It was not until July 2, 1951, however, that the region, fully satisfied that there had been full compliance by the unions, decided to "close" the case. Recognizing the propriety of this action, Mr. McClellan himself emphasized that, at this point, "the local office had no alternative but to drop the case" (hearings, vol. 18, p. 2336).

Second, any boycott activity which continued after the settlement agreement was executed was not violative of any provision of the act, and accordingly, was not contrary to the settlement agreement previously executed. Indeed, even if the Board, instead of accepting a settlement, had prosecuted its 10 (1) injunction suit to completion and obtained such injunction, this decree would not have barred the subsequent boycott activity.

As Mr. McClellan admitted, the act as now in effect, proscribes the inducement and encouragement of secondary employees; it does not prohibit a union from threatening a secondary employer directly. The activity engaged in by the

unions after the settlement agreement fell into the latter category; in Mr. McClellan's own words, the unions' pressure was exerted "in ways that bypassed the law."

It should also be emphasized that Mr. McClellan added that the Board's regional office "cooperated very well * * * [it] was powerless to do a great deal more about it than was done." As he specifically stated several times, it was "deficiencies of the law itself," rather than "any of the men involved or the union leaders," which created the company's problem.

In these circumstances, it seems apparent that, if General Paint failed to obtain an adequate remedy against the union's organizational pressure, the Board's administration of the Labor-Management Relations Act was not to blame. The Board promptly proceeded to stop all of the union's activity which involved the inducement of employees. Thereafter, the union engaged exclusively in secondary pressure of the type not proscribed by the National Labor Relations Act, which the Board was powerless to prevent. This is conclusively shown by the fact that, in his testimony, Mr. McClellan specifically recommended amendments to the act for the purpose of covering the conduct by which the unions managed to elude the prohibitions now in effect.

MOREHEAD CITY GARMENT CO., INC.

(Cases Nos. 11-RC-150, 11-CA-143; 11-CA-533)

On February 24 and 25, 1953, Honorable Representative Barden indicated in the course of the hearings that he was disturbed by the conduct of Miles J. McCormick, an attorney in the 11th regional office of the Board, during the investigation of a case in North Carolina. It appears that the investigation concerned the Morehead City Garment Company, Inc., of Morehead City, N. C. Mr. Barden stated that McCormick was alleged to have behaved improperly while attempting to secure evidence from the company. I have investigated the entire handling of the case meticulously and the facts as I have found them are set forth below.

Morehead City Garment Co. moved to Morehead City from Pennsylvania in 1936. In May of 1949 the Amalgamated Clothing Workers of America, CIO, began a campaign to organize the employees of this company, and on June 20, 1949, the union filed a representation petition, case No. 34-RC-150, with the Winston-Salem office of the Board. On July 7, 1949, the union filed a charge of unfair labor practices against the company (case No. 34-CA-143) alleging intimidation, interference, and coercion of employees.

On June 27, the field examiner wrote the company requesting a meeting to arrange for an informal settlement of the question of representation. Mrs. Jackson, president of the company, replied to this letter on June 29, stating that the date the field examiner had requested for a meeting, July 8, was not satisfactory and went on to say: "In addition I am the local manager and the only person here who can attend to such a matter and I will be leaving here the middle or latter part of next week and the date of my return is now uncertain. After I return I will be glad for a meeting to go into this matter with you."

The field examiner replied to this letter on June 30 and requested Mrs. Jackson to notify him when she returned. He also asked her again for commerce data and a list of employees, both of which he had previously requested in the letter of June 27.

On July 7, Mrs. Jackson returned the commerce data sheet, which contained only the following: "Raw materials are not purchased and finished products are not sold. The company merely processes on a contract basis." Nothing was said about the requested payroll.

On July 11, the field examiner again requested commerce data and, nothing having been heard from the company by July 20, he wrote again on that date asking that company records be made available to him for his inspection on July 27. Meanwhile, on July 16 Mrs. Jackson had forwarded to the field examiner a part of the commerce information requested. Again nothing was mentioned about the proposed meeting or about the requested payroll.

On July 22, in reply to a letter from the field examiner, Mrs. Jackson stated as follows, referring to a proposed trip to Morehead City: "Please let us hear from you about this before you go to the trouble and inconvenience of making a trip down here because I expect to have to be away a part of the time in the near future."

On July 26 the field examiner advised Mrs. Jackson that he would be in the vicinity of Morehead City on August 3 and would like to meet with her at a

conference. Mrs. Jackson replied by telegram that "I and all other officials of the company will be in Georgia. Will communicate with you when I return."

The field examiner finally saw Mrs. Jackson on August 10 and at that meeting Mrs. Jackson told him that she had no authority to make any decision in regard to the representation case without consulting her associates. One of these associates, she said, was on the west coast and she did not know where he could be reached or when he would return to his office in New York. The other associate was on a vacation at some unknown place and she did not know when he would return. Mrs. Jackson refused to take a position on any matter the field examiner asked her about. The examiner then told her that notice of hearing would issue if he did not hear from her by August 15.

On August 13 Mrs. Jackson wired the field examiner as follows:

"Have contacted my associates. He said you should inform us more in detail as to agreement for voting or election. He says he could arrange to meet here soon to decide about this. He asked if this would do away with hearing you spoke about. What date next week could you come down and talk with him about this."

The office was closed when this telegram was received and Mrs. Jackson was so notified by the telegraph company. The field examiner, on the next working day, August 15, wired the company as follows:

"Reurtel and case 34-RC-150. Although case has been set down for hearing on August 26 it will be withdrawn if consent agreement for an election is signed by all parties. Will be available in Morehead City at 3 p. m. on August 18. Suggest a joint conference company officials and union representatives at that time. Can supply information in regard to election procedures and arrange details. If this meets with your approval wire me Cape Fear Hotel, Wilmington. I will notify union representatives."

The notice of hearing issued on August 15. On August 16, Mrs. Jackson wired the field examiner as follows:

"Received your telegram. Will not be able to discuss matter with my associates until August 19 but will do so that day and will then call or wire you. Suggest you delay visit until you hear from me on August 19."

The field examiner immediately replied as follows:

"Will be available at 1 p. m. August 19. Suggest joint conference with union at that time, if consent election probable. If not will proceed with hearing. Please answer immediately."

On August 19, Mrs. Jackson wired the field examiner as follows:

"Supplementing my telegram August 16 have conferred with my associates and they have considered all about this matter. They say they do not believe that there would now be any use in meeting to discuss consenting to an election."

It should be noted that despite the numerous and patient efforts of the field examiner the company had up to the date of the hearing neither agreed to a conference to explore the possibilities of informally adjusting this matter or submitted the information as to shipments made and received in interstate commerce, which had been requested in our initial letter.

Miles McCormick (a native of South Carolina and a graduate of the University of North Carolina Law School) had been designated hearing officer, and in that capacity appeared at the City Hall, Morehead City, on August 26 at the appointed time. No company representative appeared. After waiting for almost an hour McCormick telephoned David C. Sachs, chief law officer in Baltimore, Md., and discussed with him the problem of obtaining sufficient commerce information to enable the Board to decide the matter of jurisdiction. Sachs advised McCormick to go to the plant and see if the notice of hearing had been properly delivered and if the company intended to appear. McCormick then adjourned the hearing to reconvene at 3 p. m.

McCormick then visited the company's plant. The following is his account of what transpired on that visit:

"I visited the company's plant, which was only a short distance from the City Hall, on the offchance that Hooper, who had signed the return receipt on the affidavit of service of the notice of hearing, had failed to notify the proper parties. When I went into the company's office there was only one person present that I could see. I introduced myself to him as Miles McCormick, a representative of the National Labor Relations Board from Winston-Salem, and asked to see Mrs. Jackson. The person to whom I introduced myself did not give me his name at the time. He said that Mrs. Jackson was not there. I asked where she was and he said out of town. I then asked if she had been in the office or the plant that day and he said that she had not. I asked if she did not leave word where she could be reached in the event of an emergency and he replied

that she had not. I asked if Mrs Jackson had received the notice of hearing and he said she had. I inquired why no one from the company was present at the hearing. Referring to the notice of hearing, he said, "Well, it didn't say we had to be there, did it?"

"I then asked if I could talk with Mr. L. D. Dill, whom, from my inspection of the C-case file, I know to be the superintendent of the plant. The person to whom I was speaking told me that Mr. Dill was in Fort Jackson, S C., on Army maneuvers. I then asked who was in charge of the plant and he said that nobody was. I then said, 'You don't mean to tell me that a plant this size is completely without management.' He replied that it was. I then asked the person to whom I was speaking what his name was and he said 'Peter Hooper.' I asked him what his title was and he said, 'Office manager.' I then asked him if he would come down to the city hall at 3 p. m. and testify so that the National Labor Relations Board could get some information about the operations of the company's business. He said he would not. I asked Hooper if I should be forced to subpoena him and he said he guessed I would.¹⁰ I then asked him if I could use his telephone and he said that I could. I then called John A. Penello, the regional director in Baltimore, Md. I told the regional director that the president and superintendent of the company seemed to be out of town and those who were able to testify, although requested to appear, had refused to come to the hearing. He told me to go back to the hearing and get whatever information I could from whatever sources were available, to adjourn the hearing until Monday, and to call him later that day."

McCormick returned to the hearing room, reconvened the hearing at 3 p. m., and made the following statement on the record:

"Hearing Officer McCormick. The company, for the record, is not appearing.

"The hearing was recessed at 11 o'clock a. m. today until 3 o'clock p. m. today and the company had made no appearance at any time

"The hearing officer went out to the plant and was informed that the only officials competent to testify were out of town and had been out of town for several days, that Mr. L. D. Dill is in Fort Jackson, S C., on maneuvers and Mrs Edna Jackson left for parts unknown yesterday and will return at a time indeterminate. The hearing officer at the company's office called the regional director in Baltimore and was instructed by the regional director to open the hearing and get such information as he could from whatever sources there were available and then to adjourn the hearing until Monday, whereupon he would discuss the matter further."

That evening McCormick conferred by telephone with the regional director at his home in Baltimore and was advised that at the first opportunity he should serve a subpoena duces tecum on Peter Hooper, the office manager, for the necessary records and subpoenas ad testificandum on Mrs. Jackson and Mr. Dill, the president and superintendent of the plant, respectively.

On Saturday, August 27, McCormick again visited the company's plant, but only the watchman was there. He called several times at Mrs. Jackson's residence but found no one at home. He was advised by certain employees of the company that Mrs. Jackson was at her summer home on an island a few miles from Morehead City. He went to the boat landing from which access is had to the island and spoke with the person who operates the landing who advised him that Mrs. Jackson had gone to her island on August 25 and was still there.

On Monday, August 29, McCormick again called at the company's plant. The following is his account of what transpired on that occasion:

"On Monday, August 29, I was at the plant at about 7:30 a. m. with subpoenas made out and ready to serve on the parties the regional director had said should be served. I walked into the office and there saw Peter Hooper again. I asked him if he was Peter Hooper and he said, 'Yes.' I then handed him a subpoena duces tecum requiring his presence at 10 a. m. that day at the city hall, Morehead City, and to bring with him all invoices and freight bills for the period January 1 to July 1, 1949. I then asked Mr. Hooper if Mrs. Jackson was present and he said she was not. I asked him if she worked there and he said that she did. I gave him a subpoena ad testificandum directed to Mrs. Edna Jackson to appear and testify at the same time and place. I then asked if Mr. L. D. Dill worked at the plant and he said he did. I handed him a subpoena

¹⁰ "Mr. Barden's report at this point has me inquiring if I should have to 'drag' Hooper down to the city hall. I did not say this but rather what I have set forth above."

ad testificandum requiring Dill's presence to testify at the same time and place. After giving these three subpoenas to Mr. Hooper, I walked out of the office without saying another word."

McCormick reconvened the hearing at 10 a. m. August 29 and made the following statement on the record.

"Hearing Officer McCORMICK. The hearing will be in order. The hearing officer would like to state for the record that he stayed over in Morehead City during the weekend and visited the Morehead City Garment Co.'s factory once, and Mrs. Edna Jackson's residence several times in an attempt to get in touch with her and ask her if she would not cooperate with the National Labor Relations Board in attempting to resolve the issues in this case.

"Mrs. Jackson was not at her residence at any time the hearing officer went there, and no one at the plant except the watchman, who professed ignorance as to the location of the company's officials. But this morning before 8 o'clock the hearing officer under instructions from the regional director in Baltimore went to the plant again and there found a Mr. Peter Hooper who stated to the hearing officer that he was the office manager. The hearing officer thereupon served Mr. Peter Hooper with a subpoena duces tecum and ordered him to bring to the hearing at the courthouse, city hall, Morehead City, N. C., at 10 o'clock this morning all the freight bills for the period of January 1 to June 30, 1949. For the record Mr. Hooper was served a subpoena personally by the hearing officer and at that time this morning the hearing officer served the subpoena on Mr. Hooper and left with Mr. Hooper subpoenas for Mrs. Edna Jackson and Lonnie Dill, both of whom were ordered to appear here at this place on this date at 10 o'clock a. m.

"It is now 5 minutes after 10 a. m. and as far as the hearing office can determine neither Mr. Hooper with his records or Mrs. Edna Jackson with her personal presence, nor Mr. L. D. Dill with his personal presence are in the hearing room.

"The hearing officer has expended considerable effort during the weekend and early this morning in a sincere effort to learn the whereabouts of any of these people, but it is quite obvious that even those persons served who are in the city are not appearing, and it is doubtful if anything further would be accomplished at this time in the proceeding by delaying it further, therefore the hearing officer will proceed without the cooperation of the company, or its officials or its employees, with the exception of those employees who have been subpoenaed and who have appeared."

McCormick then proceeded to examine a witness. Shortly thereafter Mr. Hooper appeared in the hearing room. Thereupon the following conversation occurred on the record between Hooper and McCormick:

"Hearing Officer McCORMICK. Excuse me, Mr. Sullivan, but the hearing officer notices Mr. Hooper has appeared. Mr. Hooper, will you take the stand?

"Mr. HOOPER. I didn't come here to testify, I can't testify. I haven't anything to say, that's not my place.

"Hearing Officer McCORMICK. You were ordered to be here. I see you have come in and we would like for you to take the stand and answer a few questions.

"Mr. HOOPER. Well, I just can't testify, I haven't any right to appear here, I'm not running the company. There's just nothing I can tell you.

"Hearing Officer McCORMICK. And so you refuse to take the stand for questioning?

"Mr. HOOPER. Well, you can ask me all the questions you want to but ain't nothing I can do, I can't answer them, you can ask them.

"Hearing Officer McCORMICK. Well, will you hold up your hand and be sworn?

"Mr. HOOPER. No, sir; I will not.

"Hearing Officer McCORMICK. You won't be sworn?

"Mr. HOOPER. No, sir, and I'll tell you why. I just can't tell you anything because what I might tell you might be wrong cause I don't have anything to substantiate what I say with; I'm not the company.

"Hearing Officer McCORMICK. Well, you only have to tell the truth so far as you know it.

"Mr. HOOPER. No, sir; I'm not going to tell you anything. I'm not going to get up here and swear to anything, I'm not supposed to.

"Hearing Officer McCORMICK. It may be noted in the record that, by the way you are office manager out there, aren't you?

"Mr. HOOPER. I beg your pardon.

"Hearing Officer McCORMICK. You are office manager of the Morehead City Garment Co., aren't you?

"Mr HOOPER. Well, you can call it that if you want to.

"Hearing Officer McCORMICK. I don't want to call it anything, but do you call it that?

"Mr. HOOPER. I don't have any title at all, I just look after the office. I haven't any right to come up here and tell anything, and I'm not going to do it.

"Hearing Officer McCORMICK. The record may note that Mr. Peter Hooper appeared and refused to take the stand. You may go if you want to, Mr. Hooper, you're at liberty to leave but you don't have to but we have no further need for you since you refuse to testify but you are welcome to stay of course. This is a public hearing and you can stay until it's completed but if you have other duties and would like to leave you will be at liberty to do so."

On September 30, 1949, the Board directed that an election be held and an election was scheduled on October 17, 1949. The union objected to conducting the election in the company's plant, and in accordance with our policy not to conduct elections on the premises where one party objects and shows reasonable cause for such objection, we scheduled the election at a place about two blocks away. The examiner personally called on the owner or lessee of these premises, contracted with him for the rental and secured his assurance that the premises would be available. Later that day a telegram was received from this individual, cancelling the arrangement; when telephoned for an explanation he stated that the management of the Morehead City Garment Co had brought pressure upon him to not permit the election to be held on his premises. We were successful, however, in renting another place for the election which was held as scheduled on October 17, 1949. The union was unsuccessful in the election and timely objections were filed by the union. Investigation disclosed merit to both the objections and the changes, 11-CA-143 (formerly 34-CA-143).

Complaint was issued against the company in 11-CA-143 (formerly 34-CA-143) and a consolidated hearing on the complaint and the objections to the election in 11-RC-150 (formerly 34-RC-150) was held, beginning June 26, 1950. The Board's order issued on May 3, 1951, setting aside the election and finding that the company had committed unfair labor practices in violation of section 8 (a) (1) and (3). The order also set aside the election of October 17, 1949. The company declined to comply with the order of the Board and on June 12, 1951, the regional director for the fifth region, Baltimore, Md., recommended the institution of enforcement proceedings. On October 29, 1951, the Circuit Court of Appeals for the Fourth Circuit entered its decree modifying and enforcing the order of the Board. The court did not modify any of the Board's findings concerning interference, restraint, and coercion, surveillance of the union meetings, threats to move the plant, interrogation of employees concerning their union sympathies and threats to discharge employees in violation of the act. The court's decree required the company to offer immediate and full reinstatement to two individuals, cease and desist from the above-mentioned interference with self-organization activities of its employees, make whole the two employees it was ordered to reinstate and post in and about its plant a notice assuring its employees that it would take the action directed. The company failed and refused to take any of the action required by the court decree and after every means of securing compliance therewith had been exhausted, the regional director for the first region, Baltimore, Md., on April 15, 1952, recommended the institution of contempt proceedings. General Counsel concurred and on June 2, 1952, recommended to the Board that the Board authorize the institution of civil and criminal contempt proceedings against the company.

On June 30, 1952, Assistant General Counsel Winthrop A. Johns, as the culmination of several efforts which he had made to secure compliance in this matter, advised the company's attorney that unless the discriminatees were offered reinstatement and the notice posted by close of business that day a petition for adjudication in contempt would be filed. That afternoon the company did mail letters offering reinstatement to the discriminatees and did post the notice. On July 2, 1952, Sally Smith, one of the discriminatees, advised the regional office by telephone that when she appeared at the company's plant pursuant to the offer of reinstatement she was advised to return home, that the company would send for her when needed. The regional director telephoned Mr. L. D. Dill, manager of the company. He confirmed that Smith had not been returned to her job and stated that the company had placed her on the payroll and intended to pay her although not to put her to work. The director advised Dill that the court's decree required reinstatement, that Smith was being advised to return to the company's plant and that if she was not forthwith restored to the same job she had before her discharge the director would recommend that we proceed in contempt as planned. When Smith returned to the plant she was restored to her job.

Our investigation disclosed that there was approximately \$3,800 due in back pay to Smith. The company prior to compliance with the court decree attempted a private settlement with Smith offering her \$1,500 on condition that she waive reinstatement. They continued to contest the accuracy of these computations and on July 29 the regional director for the fifth region, Baltimore, Md., issued a notice of further hearing, the purpose of which was to take evidence so the Board could determine the amount of back pay due. On August 29, 1952, the company paid the amount due Smith and the hearing for September 3 was cancelled. The case was closed on September 19, 1952, on the recommendation that the order had been complied with.

Shortly after the closing of the unfair labor practice case 11-CA-143 (formerly 34-CA-143) the regional office initiated an investigation, in accordance with normal practices, to determine whether or not the effects of the unfair labor practices had been dissipated so that the Board could proceed with the election theretofore set aside. It was determined that because of the flagrancy of the violations and the company's refusal for 8 months to comply with the court's decree, a longer period of time free from further violations was required before it could be said that the effects of the company's prior illegal conduct had been dissipated.

On November 25, 1952, the union filed a charge, 11-CA-533, which alleged in effect that the company had applied to the United States Department of Labor for permission to hire additional learners at subminimum rates under the Fair Labor Standards Act and in support of that application had represented to the Department of Labor that there were no experienced operators in the community while at the same time allegedly refusing employment to experienced operators in the community known or suspected of harboring union sympathies. This charge has been investigated and the evidence secured is presently being analyzed and evaluated. No decision has yet been reached as to whether complaint will issue. During later January and early February 1953, further investigations were made to determine whether the effects of the prior unfair labor practices had been dissipated. Our examiner came to the conclusion that a free and fair election could now be conducted and on February 16 conferred with the union representative as to the union's willingness to file a waiver of their right to protest such an election on any grounds set forth in the latest charge, 11-CA-533. The union representative said that she wished to consult with her home office on the point but was favorably disposed to proceeding. Apparently the union's home office concurred for on March 4, 1953, the union filed the usual request to proceed, and waiver.

On March 16 a field examiner conferred with Mrs. Jackson and Mr. Kemp of the company by telephone, advising them that we were of the view that the effects of the company's prior unfair labor practices had been sufficiently dissipated; that the election in 11-RC-150 (formerly 34-RC-150 which had been set aside, could now be rerun. Mrs. Jackson took the position that the circuit court decree had disposed of the matter and that no election at all was proper. It was explained that she was under a misapprehension concerning the effect of the circuit court decree on the election. Company representatives, however, agreed to cooperate in the conduct of the election and suggested the date of April 2 which was approved. On March 16, 1953, the regional director advised the Board that the company had finally complied with the court's order and that the atmosphere had sufficiently cleared so that a free election could be conducted. He recommended that the Board issue a supplemental order directing a new election. On March 20 the Board issued a "Direction of second election."

On March 19 we received a letter from Mrs. Jackson in which she renewed the objections to our now conducting an election and reiterated her contention that the decree of the circuit court of appeals made it unnecessary that an election be conducted. The examiner replied on the same date, again carefully explaining the legal problem involved. The election was held on April 2, 1953. The union lost. No objections being filed, the certificate of results issued on April 10, 1953, closing the case.

JUNEAU SPRUCE CORPORATION

(80 N. L. R. B. 650; 90 N. L. R. B. 1753)

On March 20, 1953, Mr. E. H. Card, personnel manager of Coos Bay Lumber Co., testified before the House Committee on Education and Labor in favor of, among other things, an amendment to section 10 (1) of the act which would make injunctive relief in respect to section 8 (b) (4) (D) violations, jurisdic-

tional disputes, unconditionally mandatory as it now is in respect to other section 8 (b) (4) violations. As section 10 (1) now reads, the injunctive provisions of the section "shall apply" to 8 (b) (4) (D) situations where injunctive relief is "appropriate." As the General Counsel stated recently before the Senate Committee on Labor and Public Welfare, while there exists some discretion in respect to injunctive relief in section 8 (b) (4) (D) cases, it has been his general practice, and that of his predecessor, promptly to seek section 10 (1) injunctions in all serious situations which could not be settled and in all other jurisdictional dispute cases once it has been established that the striking union is not entitled to assignment of the work for which it is striking.¹¹

The case which Mr. Card mentioned in his statement as illustrating a need for his proposed amendment to section 10 (1), the Juneau Spruce case,¹² it should be noted, arose out of a situation which developed shortly after the 1947 amendments to the act. At the time, there were no precedents for the interpretation of the jurisdictional disputes sections of the act, sections 8 (b) (4) (D) and 10 (k). Moreover, as noted by Mr. Card, a serious question then existed as to whether section 10 (1), which conferred jurisdiction to grant injunctive relief only on "district courts of the United States," conferred such jurisdiction on the Alaska district court.¹³

The dispute in this case involved who should load the lumber of Juneau Spruce Corp., an Alaska lumber company, aboard the latter's barge for shipment to the States. The longshoremen's union claimed the dock loading work, but the company assigned the work to its regular mill employees who were represented by the woodworkers' union. The longshoremen then picketed the Juneau Spruce plant. The woodworkers' members, employed by the company, refused to cross the picket line and refused to claim jurisdiction over the dock work which the longshoremen contended was theirs. Thus, the longshoremen were striking to secure the assignments of work to its members which the company had assigned to woodworkers' members but which the woodworkers' union refused to claim was within its jurisdiction. In other words, there was no dispute between the longshoremen and the woodworkers concerning who was entitled to the work, both agreed that it belonged to the longshoremen. This was the situation on April 10, 1948, when the first charge was filed with the Seattle Regional Office.¹⁴

As stated by Mr. Card, that charge was promptly investigated¹⁵ and dismissed by the regional director in belief that the longshoremen's strike action did not violate section 8 (b) (4) (D). The conclusion that there was no violation was predicated on the assumption that since the woodworkers acquiesced in the longshoremen's claim of jurisdiction over the dock work and there was no dispute between the two unions regarding who was entitled to the work, there was no jurisdictional dispute within the meaning of the act. The director's dismissal, on appeal, was sustained by the then General Counsel, Mr. Denham. At that time, it seems, it was assumed that section 8 (b) (4) (D), read in conjunction with section 10 (k), prohibited strike action to force the assignment of work to one group rather than another group only if both groups claimed the work.

Meanwhile, in July 1948, while the appeal from the director's dismissal was pending before Mr. Denham, the woodworkers returned to work, notwithstanding the picket line of the longshoremen, and claimed jurisdiction over the dock work. On August 3, 1948, the day before Mr. Denham dismissed the charge in the first case, Juneau Spruce filed additional charges predicated on the changed circumstances.¹⁶ These new charges were again promptly investigated¹⁷ and a notice of hearing, as required by section 10 (k), to determine whether the longshoremen were entitled to strike to secure the disputed work was issued on the new circumstances. This hearing was held at Juneau on September 21 through September 24, 1948.

¹¹ For example, during the past year, 10 (1) injunctions were authorized or obtained in *Electric Boat Division, General Dynamics Corp.* (2-CD-72), *Mason-Moore-Tracy, Inc.* (2-CD-70), *McDowell Company, Inc.* (20-CD-28), *Hall Scott Motor Division of the ACF Brill Motors Company* (20-CD-3, 32), *Samuel A. Agnew d/b/a Klamath Cedar Company* (20-CD-33), *Central Roig Refining Company, Inc.* (24-CD-2, 3, and 4).

¹² See *International Longshoremen's and Warehousemen's Union, Local No. 16, C. I. O.*, and *Juneau Spruce Corporation* (82 N. L. R. B. 650; 90 N. L. R. B. 1753).

¹³ See 28 U. S. C. sec. 81-128, 451, and *International Longshoremen v. Wirtz* (170 F. 2d 183 (C. A. 9)), holding that a territorial court is not a "court of the United States."

¹⁴ *International Longshoremen's and Warehousemen's Union Local No. 16*, case No. (19-CD-2).

¹⁵ The field examiner, as Mr. Card noted, was in Juneau to investigate the case 4 days after the charge was filed.

¹⁶ *International Longshoremen's and Warehousemen's Union Local No. 16* (19-CD-4 and 5).

¹⁷ A field examiner was sent to Juneau on August 12, 1948.

In October 1948, after the conclusion of the section 10 (k) hearing, Juneau Spruce requested the General Counsel to seek an injunction against the longshoremen under section 10 (1). The record made at the 10 (k) hearing was examined, and it was learned that the longshoremen has interposed a number of defenses to support its claim that it was entitled to strike to get the dock work. Among these were: (1) The contention that its certification as the bargaining representative of the Pacific Coast Waterfront and Shipowners Associations covered the Juneau Spruce work; (2) the assertion that Juneau Spruce was obligated under the contracts between Juneau Spruce's predecessor and the longshoremen to assign the dock work to members of longshoremen; and (3) the argument that the claimed work was traditionally longshoremen's work and not mill hands' work. At this time the General Counsel had no knowledge of how the Board would deal with defenses of this nature; the Board's first 10 (k) determination was not issued until March 2, 1949.¹⁸ Moreover, as noted above, at this time it was doubted that the Alaska district court had jurisdiction to entertain an application for injunctive relief under section 10 (1). For these reasons, Mr. Denham decided that an application for 10 (1) injunctive relief at that time was inappropriate.

The Board's 10 (k) determination in this case, at this time only the second such issued by the Board, was issued on April 1, 1949. At about the same time, the Alaska district court decided, in the civil action for damages brought by Juneau Spruce against the longshoremen under section 303, that it had jurisdiction under the act.¹⁹

When the doubt as to the propriety of 10 (1) injunctive relief was removed by the issuance of these two decisions, the Board's determination that the longshoremen were not entitled to strike for the dock work and the Alaska court's decision that it had jurisdiction in the matter, the General Counsel of that time authorized injunction proceedings to restrain the longshoremen's illegal conduct. However, institution of the injunction proceeding was further delayed when the longshoremen's union filed suit in the district court of the State of Washington to restrain the Section 10 (1) action. After the Washington district court proceeding was disposed of, the 10 (1) petition was filed in the Alaska district court on May 12, 1949, and the injunction was issued on May 14, 1949. This brought the longshoremen's illegal activities to an immediate end and Juneau Spruce operated without further interference from the longshoremen until its mill burned down in October 1949.

Mr. Card stated that after Juneau Spruce reopened its plant in July 1948, it was forced again to close down in October 1948 because the longshoremen boycotted its lumber in the States. Mr. Card's statement was the first knowledge we had of such situation. No charge of secondary boycott activities on the part of longshoremen in the United States was ever called to our attention by the company. The only boycott incident reported by the company concerned a refusal of a union to unload its lumber at Prince Rupert, British Columbia, Canada. The 8 (b) (4) (A) charge concerning that incident was dismissed by us because the boycott action occurred in Canada and not under our jurisdiction.

It appears that these charges were promptly handled in the various stages of the regional office and at the General Counsel's level. Moreover, counsel for Juneau Spruce, after the conclusion of the injunction hearing, was highly complimentary of the manner in which it had been handled. As previously noted, there were no precedents for interpretation of the sections involved, a factor which must be taken into account when considering delays. More recent cases have, of course, shown a considerable improvement in speed of handling at all stages, from filing to decision.

DIXIE CORPORATION, ROME, GA.

(Cases Nos. 10-CA-1385, 10-CA-1459)

On March 11, 1953, Mr. Gordon L. Sullivan testified before the committee regarding the above cases. Mr. Sullivan, together with Mr. John W. Cummiskey of Grand Rapids, Mich., represented the company in the proceedings before the Board. The charge in case 10-CA-1385 was filed on October 16, 1951, and alleged that the company had violated section 8 (a) (1) and also section 8 (a) (3) by discriminatorily discharging three men during July and August of 1951.

¹⁸ *International Association of Machinists et al. and Moore Drydock Co.* (81 N. L. R. B. 1108)

¹⁹ The judge's opinion was issued on March 11, 1949, but we were not immediately advised of the decision (see 24 L. R. R. M. 2045)

The union's organizational efforts had started during the spring of 1951. These efforts culminated in an election proceeding requested by the union in which, on November 8, 1951, the union was designated as the bargaining representative by a majority of the employees. The first charge mentioned above had been waived as a basis for an objection to such an election.

Thereafter, there occurred a period of bargaining during which both parties met and discussed terms of a possible contract. These negotiations took place, for the most part, during December 1951 and January of 1952.

The meetings broke down in early February, and on February 27, 1952, the charge in case 10-CA-1459 was filed alleging that the company was refusing to bargain in good faith in violation of section 8 (a) (5).

Investigation indicated that the three persons, subjects of the first charge, had not been discharged in violation of the act. Pursuant to this informal investigation, the allegation under 8 (a) (3) was deleted in July of 1952. In other words, the company was cleared of the charge that it had fired three individuals improperly.

The investigation did disclose, however, that the refusal to bargain charge appeared to have merit, and that certain other acts of interrogation and surveillance were improper. On July 23, 1952, the charges in both cases were consolidated and a complaint was issued.

At the time the complaint issued, the hearing was set for a date some 6 months thereafter. Mr. Sullivan complained about this time lag in his testimony. This lag, however, was directly the result of a cut in appropriations during 1951, so that the Division of Trial Examiners had been greatly reduced and many cases were subject to delays similar to that described here. The General Counsel's Office during this period adopted a policy to issue complaints as soon as possible, so that parties charged with violations of the act would know at the earliest possible date exactly what was being made the subject of a complaint.

The complaint was the basis for criticism by Mr. Sullivan in his testimony. He stated that there was "no allegation in the complaint saying who had coerced and who had restrained," nor "had the complaint given any specifications or allegations as to the conduct * * * of certain employees. Actually, the complaint did set forth four instances of interference forming the basis of violations of section 8 (a) (1). Names of the company representatives involved and approximate dates were specified. More than this would have been a disclosure of evidence. Moreover, the company did not avail itself of the normal procedure by which greater specificity is accomplished by making a motion for a bill of particulars.

Mr. Sullivan made a point of the fact that the General Counsel was represented at the hearing by 2 attorneys rather than 1. Mr. Sullivan, as has already been pointed out, was accompanied by a second attorney on behalf of the company. It is, of course, correct that normally the General Counsel is represented by a single attorney. In the instant case, however, Mr. John S. Patton, an attorney with considerable experience with the agency, was accompanied by Mr. Edwin Hancock, who had been employed by the NLRB only 14 days when the hearing commenced and was there solely for training purposes. Mr. Patton conferred with the union's attorney, who was also present at the hearing, on occasion when the need arose. A charging party, whether it be a union or an employer, is frequently represented at Board hearings by its own attorney. It is the General Counsel's position that he, on behalf of the Government, is in control of a case. It would, nevertheless, be improper to make any efforts to exclude counsel except insofar as his activities might interfere with the prosecution of the Government's case. The point here is that, contrary to Mr. Sullivan's impression, there is nothing inherently improper in the presence of counsel for the charging party, and such conferring as might be necessary for the purpose of avoiding confusion in the conduct of the trial.

The trial examiner's intermediate report issued March 24, 1953, shortly after Mr. Sullivan appeared before the committee. The trial examiner therein found that 3 of the 4 allegations of interference had merit, but more importantly, he found that the company had violated section 8 (a) (5) of the act by adamantly insisting upon a clause "giving the control unilaterally at any time and at all times over wages, hours, and other terms and conditions of employment, and the final termination of all grievances. * * * There was [nothing] of substance left to bargain about." As the trial examiner pointed out, "If this is not a refusal to bargain, or conversely, is bargaining in good faith, then the English language has lost its integrity, the duty to bargain set forth in the act is meaningless and the avowed purpose of Congress to prevent industrial strife affecting

commerce by protecting the right to bargain collectively has been completely frustrated." In short, therefore, the trial examiner's view was that the General Counsel was correct in issuing a complaint alleging a refusal to bargain on the part of the company by taking a position which appears to strike at the very heart of congressional purposes.

POULTRY ENTERPRISES, INC., GAINESVILLE, GA

(Cases Nos. 10-CA-1223, 10-RC-1299, 10-CA-1562, 10-CA-1714)

Emory F. Robinson appeared before the committee on April 14, 1953, and testified regarding the above cases. Mr. Robinson is an attorney who represents Poultry Enterprises, Inc., in proceedings before the Board.

During January, February, and March 1951, the union held several meetings in its efforts to organize employees of the poultry dressing plants in the Gainesville, Ga., area.

Organization at the Poultry Enterprises Co. was begun during February and in the period February 16 through February 23, 73 of the company's 133 employees signed cards authorizing the union to represent them.

On February 27 the union, by letter, requested recognition and simultaneously therewith filed a petition for certification of representatives, with the 10th regional office, which was docketed as case No. 10-RC-1299. On February 28, the respondent, by letter, denied the union's request, stating it did so on the basis of present information.

On March 6 a union meeting was held at the Dixie Hunt Hotel, which was attended by a Bennie Talton, who was alleged in the complaint as a supervisor. The company denied that Talton had supervisory status. The trial examiner did not rule on this question as he found the allegation in the complaint of surveillance to be sustained by proof of surveillance of another union meeting by Plant Superintendent Nix. (Departing from the chronology for a moment, it appears that Talton occupied the same position as is now occupied by J. N. Farmer, who was found by Trial Examiner Downing, in case No. 10-CA-1562, to be a supervisor.)

On March 12 the union filed the initial charge in case No. 10-CA-1233 which charge was waived, as a basis for objection to a possible election, by the union in order to proceed with the representation case.

On March 19 a meeting was held by former Field Examiner William V. George with J. H. Martin, president of the company and S. G. Stewart, Jr., vice president, relative to the petition in case No. 10-RC-1299.

In a 2-week period, immediately following the March 19 conference with the field examiner, Company President Martin held a series of meetings at his offices at the local Chevrolet agency. These meetings were on company time and employees were transported from the plant to the Chevrolet agency and back to the plant by the company. At the hearing, witnesses for the General Counsel offered testimony as to the statements by Martin during these meetings containing promises of benefit or threats and included testimony as to a polling of the employees present. The company present employee witnesses as to what was said at the meetings. These witnesses, without exception, denied that Company President Martin had made the statements attributed to him by witnesses for the General Counsel. However, they could not recall anything that Mr. Martin did say.

At some time between March 19 and April 3 Company Vice President Stewart consulted with Company Attorney Wheeler as to how employees could withdraw from the union. Company Attorney Wheeler dictated a revocation form to one of the company stenographers. The revocation form was run off by the company on a ditto machine and brought to Stewart's office. Some were placed in the employees waiting room and in the stenographer's office. According to the dates on the revocation forms, in the period April 3, 4, 5, 6, and 7, 127 of the company's 131 employees, as of April 17, signed these revocation forms. Undenied testimony was offered to the signing of the revocation forms in various parts of the plant.

Vice President Stewart testified that the forms "all seemed to get back into my office some way." The forms were kept in the company's files until produced at the hearing in case No. 10-CA-1223. The General Counsel offered testimony showing solicitation of signature on these forms by the plant superintendent.

On April 6 the hearing in case No. 10-RC-1299 took place and on April 23 the Board issued its decision and direction of election directing an election to be

conducted "not later than 30 days from the date of this direction." Thereafter on April 30 amended unfair labor practice charges were filed by the union which the union refused to waive and on May 3 the Board amended its direction of election in case No. 10-RC-1299 upon the region's request and in conformity with usual practice so that the election would be conducted "at such time as the regional director deems an election may appropriately be conducted."

It should be understood that this charge suggests a change in the labor relations picture. In effect the union is saying that the company has so interfered with the employees' right to join that an election would reflect a rejection of the union without reflecting the employees' real desires. Subsequent investigation disclosed sufficient evidence of such interference so that complaint was issued. Under these circumstances and in accordance with our long established procedures, the representation case was held up.

During June 1951 the company granted an across-the-board increase to its employees.

On or about July 8 Plant Superintendent Nix kept under surveillance a union meeting. The trial examiner's finding of surveillance in this regard is the subject of testimony by Attorney Robinson.

On March 18, 1952 complaint in case No. 10-CA-1223 was issued and on March 20 the Board granted the Union's request for withdrawal of petition in 10-RC-1299.

On April 21, 22, 23, and 24, 1952, a hearing was held in Gainesville, Ga., on the complaint in case No. 10-CA-1223, before Trial Examiner Sidney Lindner.

On July 9, 1952, the trial examiner issued his intermediate report, finding that the company had violated sections 8 (a) (1) and (5) as alleged in the complaint and on July 31 the company filed exceptions to the intermediate report.

From approximately July 15 to August 14, 1952, employees of the company were solicited by J. N. Farmer and Flossie Howard, who were also employed by the company, to sign a petition requesting the company not to recognize the union and 145 of the company's 149 employees signed this petition.

On August 4, 1952, the union filed a new charge docketed as case No. 10-CA-1562, alleging the solicitation of signatures to the petition by Farmer and Howard to be violative of section 8 (a) (1) of the act.

On August 15 copies of the signed petition discussed above were mailed to the regional office of the Board and to the company.

On October 7 the company made application to the Board for leave to amend its answer in case No. 10-CA-1223 on the basis of the petition referred to immediately above.

On October 10 the General Counsel filed a motion in opposition to the company's application for leave to amend its answer.

On December 24, 1952, complaint issued in case No. 10-CA-1562.

On January 14, 1953, the board issued its decision and order in case No. 10-CA-1223 sustaining the findings of the trial examiner.

On March 6, 1953, a hearing was held on the complaint in case No. 10-CA-1562 before Trial Examiner George A. Downing. The chief issue in the case was the supervisory or agency status of J. N. Farmer and Flossie Howard. During the hearing the General Counsel called four persons who were then employed by the company. They were employees Vesta Payne and Myrtle Sorrels, long time employees of the company, who gave forthright testimony on the duties of Farmer and Howard; employee Etta Martin (no relation apparently to the owners of the company), who did not testify in full accord with an affidavit she had previously given us, but was not impeached since the trial attorney did not feel that her testimony injured the facts of the case. She was observed, immediately prior to taking the stand, in a discussion with Mrs. J. H. Martin, one of the company owners and wife of the president, and heard to state, "I don't want to testify against you", and employee Minnie Lee Lathem, a long-time employee of the company who appeared highly nervous and excited at the time of testifying and who gave somewhat confused testimony to which no great weight could be attached.

On April 7, 1953, the union filed a charge docketed as case No. 10-CA-1714 alleging the discharge on April 3, 1953 of employees Vesta Payne and Myrtle Sorrels (the Board's witnesses in case No. 10-CA-1562) as violation of sections 8 (a) (1), and (3), and (4). This charge has not been investigated.

On April 15, 1953, Trial Examiner Downing issued his intermediate report in case No. 10-CA-1562 finding J. N. Farmer to be a supervisor and concluding as a result that the company had violated section 8 (a) (1) by Farmer's conduct in

soliciting employees to sign the union withdrawal petition which has been referred to hereinabove.

Not covered in the chronological summary above is the following:

Proof of majority in case No. 10-CA-1223 rested upon proof of signatures to authorization cards. A form letter was sent to the persons signing the cards at the addresses shown on the cards. The company learned of this form letter. The letter scheduled appointments at various times for employees to talk with the Board agent who was handling that phase of the investigation. The plant superintendent informed employees that they did not have to see the Board agent and that it would probably be better if they did not. As the respondent subsequently stipulated to the signatures on the cards, no issue was made at the hearing in case No. 10-CA-1223 on this point.

There did not appear to be any points raised by the testimony of Attorney Robinson which are not thoroughly covered by the various intermediate reports and the Board order.

REILLY CARTAGE CO.

(Cases Nos. 13-CC-67, 13-CA-1285)

On April 23, 1953, Mr. Lawrence J. Reilly, manager of the Reilly Cartage Co., of Milwaukee, Wis., testified before the House Committee on Education and Labor with respect to the above-entitled cases.

On November 13, 1952, local 200, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL, filed a charge against Reilly Cartage Co. alleging that the company had interfered with the rights of his employees as guaranteed by section 7 of the Labor-Management Relations Act of 1947. Mr. Reilly testified that the charge alleged that "I had repeatedly said that I would dispose of my business if my men joined the union. To this statement I say it is a complete falsehood." Later, in reply to questions from Chairman McConnell, Mr. Reilly testified that he had never told his employees that he did not want them to join a union.

There was also considerable testimony concerning a letter dated April 14, 1953, from the Chicago regional office to the company's attorney, Mr. O. S. Hoebreck, advising that a complaint would issue and that a hearing was set for May 18, 1953. The committee was given the impression that this letter contained a veiled threat against the company.

The results of the region's investigation indicated issuance of a complaint was warranted and hearing is now set for May 25, 1953. As for Mr. Reilly's statement on the merits of the case, the basis for action is set forth in the letter of April 14, 1953, to Mr. Hoebreck, a copy of which is attached. It is quite apparent from reading this letter that the company was not being threatened with a complaint unless they settled. On the contrary, the company was being informed of the region's decision and was being offered an opportunity to adjust the matter informally. This is a general practice followed in all regions and is not only required by the Administrative Procedures Act but is also highly desirable from the point of view of good policy and public relations.

Mr. Reilly complained that the field examiner was taken to the witnesses by the union representative.

It is customary procedure for the field examiner to begin his investigation by obtaining a broad outline of the allegations of the charge through an interview with the charging party, be it an employer, a union, or an individual. Moreover, the charging party is required to furnish evidence in support of his charge, direct the examiner to persons who can, and to assist the examiner in locating pertinent witnesses. Indeed, if the charging party were unwilling to cooperate in investigation of the charge, it would be dismissed. Investigation of the charge without the assistance of the charging party, who is usually the only one who knows where the witnesses are, would introduce extensive delays or perhaps render proper investigation of the case impossible.

In the meantime, on February 24, 1953, the company had filed a charge against the union alleging violation of section 8 (b) (4) (A), (B), and (D).

The main issue involved in the case was whether the union could picket Reilly's trucks at the premises of secondary employers when Reilly had a terminal where he could be picketed. The union raised novel and complex defenses which introduced very close questions of law. It was necessary to investigate the matter thoroughly and then assign a special injunction attorney from Washington to conduct a further and more exhaustive investigation in the field. As is often true

with landmark cases, it takes some time to hammer out the theory of law involved, but similar cases which follow can then be handled much more expeditiously. In this case it has been decided to petition for injunctive relief and an attorney from the General Counsel's office is presently in Milwaukee filing the necessary papers.

Considerable testimony was devoted to statements attributed to the field examiner in the CC case, Miss Virginia McElroy. Unfortunately, Miss McElroy left on extended leave in Europe prior to Mr. Reilly's testimony and we have been unable as yet to contact her on this matter. However, we have forwarded an extract of the testimony to her, with a request that she take advantage of the committee's offer to send a statement directly to it for the record. It is to be hoped that she will be able to do this before the record is closed on May 15, 1953

NATIONAL LABOR RELATIONS BOARD,
THIRTEENTH REGION,
Chicago 3, Ill., April 14, 1953.

Re Reilly Cartage Co., Case No. 13-CA-1285.

Mr. O. S. HOEBRECK,

ROBERTSON & HOEBRECK,

640 Wells Building, 324 East Wisconsin Avenue, Milwaukee 2, Wis.

DEAR SIR: As we arranged today in our telephone conversation, I am writing to you to inform you of our decision to issue complaint in this matter and the basis for such decision, and also the terms upon which we feel we can arrive at a settlement of this matter. Obviously, we would prefer to reach a satisfactory settlement before a complaint is issued. We have a date set for hearing of May 18, 1953. If complaint is going to issue, we would like to issue it by April 20, and would therefore appreciate a response to this letter before that time.

Evidence in our possession indicates that in or about the months of October and November 1952, the company, by Lawrence Reilly, one of its officers, threatened its employees that the company would go out of business before it would sign a contract with the union, and further threatened them that if the employees joined the union, there would be no jobs for them with the company. The evidence we have further indicates that in or about the months of August and September 1952, and again or or about November 5, 1952, the company by Lawrence Reilly, one of its officers, stated to union representatives Clarence Johannes, Henry Kuchera, and Thomas Beaudoin that even if a majority of the employees of the company joined the union, the company would not bargain with said union, and that the company would sell its trucks rather than recognize the union.

The statements referred to above, if made to employees, as our evidence indicates, are clear violations of the act. Admittedly, there may be some question as to whether or not similar statements made to union representatives are also violations. We believe that they are, and are proceeding accordingly. As support for our position we refer you to *Roscnblatt's Friendly Mountain Line* (56 N. L. R. B. 769, at p. 769); *Artion Studios, Inc.* (74 N. L. R. B. 1158, 1163) (refer to *The Federbush Co., Inc.* (34 N. L. R. B. 539, 547-548)); *Pure Oil Company* (90 N. L. R. B. 166, 1662); *Arlington-Fairfax Broadcasting Co., Inc. (Radio Station WEAM)* (95 N. L. R. B. 846, 856). See also surveillance cases where it has been held that surveillance is interference whether or not employees are aware of it. *N. L. R. B. v. Collins & Aikman Corporation* (146 F. 2d 454, 445 (CA-4)); *Baldwin Locomotive* (128 F. 2d 39 (CA-3)).

Admittedly there are some cases which would reach a contrary conclusion to the above cases, but we feel the weight of authority and the more recent cases support our position.

The matter can be settled by the posting of a notice for 60 days, and copies of such proposed notice are enclosed, subject of course to the approval of the regional director for the 13th region. As indicated at the start of this letter, I would very much appreciate a response from you by April 17, if possible.

Very truly yours,

GEORGE SQUILLACOTE, Attorney.

STANISLAUS IMPLEMENT & HARDWARE Co., MODESTO, CALIF.

(Cases Nos. 20-CA-512, 583)

On April 24, 1953, Mr. Clifton Rooker testified before the committee regarding the 2 cases noted above. His criticism of how these cases were handled was extensive, and therefore merits careful analysis.

The facts in 20-CA-512

A charge was filed on November 3, 1950, by the International Association of Machinists, District Lodge No. 41, alleging various acts of interference and that one Joseph B. Sims, an employee, had been discharged because of union activity. Following a careful investigation which included interviewing witnesses of both the charging party and the employer, it was concluded that there was a basis for the charge; and after settlement efforts failed, a complaint was issued. The hearing was held at Modesto, Calif., on April 3 and 4, 1951 before William E. Spencer, a trial examiner.

The trial examiner found that the company had violated section 8 (a) (1) by interrogating employees concerning their union membership and activities, and threatening them with loss of benefits, and promising and granting wage increases for the purpose of inducing employees to refrain from union affiliation and activities. With respect to the 8 (a) (3) allegation, the trial examiner stated that the testimony concerning Sims' termination of employment presented a question of credibility, and that "the resolution of credibility is a difficult one." He concluded that he was not convinced that the employer had unlawfully discharged Sims and recommended that that phase of the complaint be dismissed. No exceptions were filed to this report by the employer, and on May 17, 1951, the Board affirmed those findings.

The facts in case 20-CA-588

The union won an election, was certified, and sought to work out an agreement with the company.

On April 30, 1951, a charge was filed by the International Association of Machinists, District Lodge No. 31, alleging that since on or about January 31, 1951, the company had failed and refused to bargain in good faith with the union.

Thereafter, on July 16, 1951, a first-amended charge was filed by the union adding a further allegation of a violation of section 8 (a) (4) of the act in that in February 1951 the employer had refused to reemploy Joe B. Sims because "he gave testimony against the company in case No. 20-CA-512."

A thorough investigation was made, witnesses for both the charging party and the employer were interviewed, and statements under oath were taken. Since it appeared that there was a basis for the charge, and after efforts to obtain voluntary compliance with the law had failed, a complaint was issued on December 27, 1951. A hearing was held before Trial Examiner Herman Marx at Modesto, Calif., on January 15, 16, and 17, 1952, and the intermediate report was issued on February 7, 1952. The trial examiner found that Sims had been refused re-employment because of the charges filed with the Board and recommended an appropriate order. He also found that the company had not been bargaining in good faith. The employer filed exceptions and a brief with the Board, and on November 19, 1952, the Board handed down its decision and order which, in effect, sustained the finding of the trial examiner and followed his recommendations.

The criticism with respect to the handling of the above cases

1. Initially, Mr. Rooker reports that "a slight employee dissatisfaction" invoked the organizational drive, that the company was found "to have committed certain minor violations" which "were the result of lack of information and experience" and then proceeds to attack what he terms loosely the philosophy of the General Counsel's staff which led to "prejudicial persecution" in an attempt "to assist the unions in their efforts"

In this particular case 1 central fact is that there are 2 Board orders finding that this company has been trying to deprive its employees of rights guaranteed by public law.

The "pattern" of maladministration which Mr. Rooker seeks to establish on the basis of his limited experience completely ignores the fact that the vast majority of companies involved in proceedings with the San Francisco office have been represented by such organizations and individuals as the San Francisco Employers Council; United Employers, Inc. of Oakland, Calif.; California Processors & Growers, Inc.; the Pacific Maritime Association and its predecessor, the Waterfront Employers Association; J. Paul St. Sure, Littler, Lauritzen & Mendelsohn, and Pillsbury, Madison & Sutro; all leading and distinguished organizations and individuals on the west coast. The relationship with these organizations and individuals has been and is on the basis of being able to dispose of charges and cases without litigation, solely because such organizations and individuals believe and have stated that the representatives of the General

Counsel are honest and objective and their handling of cases under the act has been conducted in an objective manner.

2. Mr. Rooker complained that the ballot cast by a nephew of the president of the company was challenged and that he was declared ineligible to vote in the bargaining unit. Numerous Board decisions both before and after the passage of the Taft-Hartley Act hold that close relatives of an employer are not eligible to vote in a bargaining unit of that employer's plant.

3. The two charges filed with respect to Sims:

The claim was made before the committee that with respect to the second unfair-labor-practice charge it was the contention of the regional office that the refusal to rehire Sims was a continuing violation and, therefore, the 6-month limitation in the act did not apply. The true facts disclose that the second charge was filed within the 6-month period set forth in section 10 (b) of the act. The refusal to rehire Sims occurred on February 7, 1951, and the amended charge alleging this to be a violation was filed July 16, 1951. Although registered-mail return receipts show that the employer had copies of the original and the two amended charges, and therefore was in possession of the true facts concerning these dates, he misrepresented these facts before the committee.

4. Alleged double jeopardy: Mr. Rooker testified before the committee that the company was being tried all over again after having been first found not guilty. In the first case, the charge and the complaint alleged violations of section 8 (a) (3) in that the employer had discriminatorily discharged Sims.

In the second case (20-CA-583), the charge and the complaint alleged violation of sections 8 (a) (1), (4), and (5). With respect to the 8 (a) (1) violations in that case, it appeared that the employer engaged in other and in similar violations contrary to the law. The allegations with respect to the violations of sections 8 (a) (4) and 8 (a) (5) were completely new and had not been alleged or litigated in the first case. They covered events which transpired after the complaint in the first case had been issued.

5. Evaluation of witnesses: Although Mr. Rooker testified before the committee that the veracity of the company's witnesses was questioned and the testimony of the union's witnesses accepted as truth, examination of the intermediate report of the trial examiner shows that he accepted and rejected testimony of witnesses from both sides.

6. Confusion of witnesses: The employer's representative testified before the committee that Nathan R. Berke, the attorney who presented the case for the Board, had sat as a hearing officer in one of the earlier phases of "our previous case" and that "he was successful in confusing our witnesses by questioning them and then turning to their testimony on the same points in the transcript of the previous case."

Mr. Berke was the hearing officer in representation case No. 20-RC-1068, which was a nonadversary proceeding decided by the Board before the unfair-labor-practice charges were filed. Mr. Berke was assigned as the trial attorney to the second complaint case, No. 20-CA-583. In the course of cross-examining the employer's witnesses he found that they were giving testimony which was contradictory to that given by them under oath at the hearing in case 20-CA-512. Referring to the transcript containing the testimony in that earlier case, he cross-examined witnesses to establish that they were telling contradictory stories and for the purpose of eliciting the truth. This practice and procedure is time-honored and consistently employed in all the courts of the land by any competent attorney. The inconsistencies had to do with facts and not with failure to repeat previous testimony verbatim. The same privilege was available to attorneys for the company.

7. Back pay: Although Mr. Rooker was relating, before the committee, a conversation alleged to have taken place between the company's counsel and Louis S. Penfield, the chief law officer for the 20th region, and although such secondhand retelling is subject to infirmities, it is essential to set forth the exact situation. When the Board order issued, the company was advised immediately that compliance matters would be handled by Mr. Bradford C. Wells. Mr. Penfield met with one J. Hart Clinton, an attorney representing the company, to discuss some general legal principles involved and not to make any specific arrangements concerning the back pay which both gentlemen knew had been assigned to Mr. Wells. At no time did Mr. Penfield make any agreement concerning the back pay. Incidentally, Mr. Clinton in the past has commended this Office, saying in a letter to the General Counsel:

"I wish to particularly call to your attention the fine work which was done by Mr. James F. Foley, whom you sent on from Washington, as well as by Mr.

Sam Ross, who preceded him, and Mr Nathan Berke of the regional staff here in San Francisco. I suppose it would be superfluous to add that Mr Gerald Brown, the regional director, and Mr Penfield, the regional attorney, were most helpful as usual in the handling of this problem, which was particularly intricate because of the number of unions and parties involved. Both the unions and the employers in this area have great respect and confidence in the integrity and fairness of both Mr. Brown and Mr Penfield, and this confidence was more than justified by the expert manner in which they assisted in bringing the opposing parties to the peace table and in working out the terms of settlement with Mr. Foley. I believe that this fine administrative work by you and your staff in this matter amply demonstrates that the Taft-Hartley Act can be made to work effectively for the public interest."

8 Field Examiner Wells and back-pay computations: A very confused picture of the back-pay computations has been presented to the committee. As is customary, an itemized statement was obtained from Mr Sims setting forth the names of all of the employers for whom he worked during the interim period (i. e., from the time of refusal of rehire to reinstatement), the amounts he earned, and an itemized statement as to the expenses incurred in connection with seeking employment. In addition, a copy of the record of earnings as reported by employers to the Social Security Administration was obtained. A preliminary statement of interim earnings, expenses, and a calculation of back-pay tentatively prepared on the basis of data submitted by Sims and Rooker was presented to the company so that any mistakes could be rectified or any objections considered. This tentative calculation represented \$1,783.13 as back pay due Sims, but this figure was never presented to the employer or any representative of his as representing a final calculation of the back pay due. On February 4, 1953, in a conference with Mr Wells, J Hart Clinton, counsel, and Winston Caldwell, labor-relations adviser, it was presented as a tentative computation subject to revision on receipt of data from interim employers, some of which had already been received. Both Messrs. Clinton and Caldwell were given the same data which would indicate as of that time a reduction in the amount due to approximately \$1,300. Following the conference, Mr Caldwell was supplied with a statement showing all of the interim employers and their respective payments to Sims for the periods during which he was employed by any of them, together with a copy of Sims' statement of expenses incurred seeking work during the period of his discrimination, for the purpose of affording the employer every opportunity of ascertaining the accuracy of Sims' claimed earnings and expenses.

Although Mr Rooker testified that the company made no effort to contact the other employers of Sims whose names were provided them by this office because, "That would cost us more than it was worth," it would appear that a 3-cent stamp could obtain the verification. Full disclosure of all information received by the regional office was made and any objection raised by the company would have resulted in further investigation.

It is also worth noting that, while Mr Rooker asserts there were jobs available in the Modesto area for Sims, Sims had registered with the Employment Service in that area and was not referred to any such jobs. The data submitted both Mr Sims and as verified by the records of the Social Security Administration shows that he worked rather consistently in an effort to mitigate the loss of earnings and to decrease the amount of money owed by the company as the result of the refusal of the employer to rehire him.

A final computation was made subsequently based upon earnings data submitted by the Social Security Administration (which confirmed in every respect the information and data supplied by Sims, which figure represents a sum due of \$1,269.91).

Up to the present no part of this amount has been paid by the employer. In order to afford the employer ample opportunity to establish that the back pay calculated to be due should be reduced, a hearing for such purpose was set and will come on before a trial examiner on June 25, 1953. At that time the employer will be afforded every opportunity to present whatever evidence he has, for the purpose of determining the exact amount owing.

CACHE VALLEY DAIRY ASSOCIATION

(Case No. 20-CA-674)

Mr. Ross E. Thoresen, manager of the Industrial Relations Council of Utah, testified before the committee on April 23, 1953. With reference to the above

case, Mr. Thoresen complained that after a general charge was filed the Board investigators interviewed all of the employees involved and that thereafter a complaint was served on the company which was so vague that they could not understand it.

Mr. Thoresen is quite correct in stating that the employees involved herein were interviewed by the Board representatives and that also employer representatives were interviewed. Normally, if an investigation indicates that a charge does not have merit, the charge is either withdrawn or dismissed, but in this instance the charge appeared to have merit and a complaint was issued. With reference to Mr. Thoresen's comments regarding the vagueness of the complaint, it should be noted that a request for a bill of particulars was granted in part and denied in part by the trial examiner on September 25, 1952. A copy of the bill of particulars was mailed to the company's attorney on October 8, 1952; and although the hearing did not begin until October 29, 1952, neither of the respondents ever indicated that the particulars supplied were unsatisfactory and they never requested any further particulars.

After previously complaining that the field examiner interviewed all employees, Mr. Thoresen stated in his testimony that Field Examiner Bradford C Wells only saw 1 of 12 employees who were supposed to have heard some threatening statements by the employer.

The facts of the matter indicate that Mr. Wells was never in Utah at any time during the investigation of this case. A letter describing the threats was received by the regional office after the investigation was completed, and Mr. Karasick of the regional office interviewed several employees in an attempt to check the accuracy of the information. Two of the employees were called as witnesses by Mr. Karasick at the trial, and others were called by the company counsel. The questioning and remarks of the trial examiner described by Mr. Thoresen do not appear anywhere in the record. In direct conflict with Thoresen's testimony, the intermediate report in this case shows the trial examiner declined to resolve this conflict and made no findings with respect to it.

THE FARMERS' MARKET ET AL

(Cases Nos. 20-CB-209, 20-RM-80-82)

On April 23, 1953, Mr. Ross Thoresen, manager of the Industrial Relations Council of Utah, testified with respect to the above cases. In his testimony Mr. Thoresen appears to believe that the National Labor Relations Board is responsible in some unspecified manner for his client's difficulties with the teamsters' union in the above cases. Further, Mr. Thoresen appears critical of the regional office in that the charge against the union was dismissed and is critical of alleged reluctance of the regional office to conduct the elections requested by the employers.

Case No. 20-CB-209 was filed by Mr. Thoresen on July 31, 1951, alleging that the Teamsters' Local No. 222 had refused to bargain with the Industrial Relations Council of Utah as the representative of the employers. On the same day Mr. Thoresen filed petitions for elections in cases Nos. 20-RC-80, 20-RM-81, and 20-RM-82 concerning the same employees. Since no illegal refusal to bargain can occur at a time when a question of representation exists, and because the facts alleged in the unfair labor practice charge occurred prior to the 6 months' period preceding the filing of the charge, case No. 20-CB-209 was dismissed. At that time Mr. Thoresen indicated to the regional office that his charge did not have merit and that he was aware of this fact but stated that he desired to make a record for the Utah State Legislature for the purpose of obtaining a favorable consideration for a legislative proposal to ban organizational picketing.

With respect to the representation cases, a hearing was scheduled in Salt Lake City, Utah, but the hearing was never opened. Prior to the scheduled time of hearing the union filed a notice that it did not claim to represent a majority of the employees involved and, pursuant to well established Board doctrine, the representation cases were then dismissed.

Mr. Thoresen in his testimony criticized the regional offices for having to send examiners from San Francisco and Seattle to conduct elections for small numbers of employees in Utah. The fact of the matter is that almost all of the elections conducted by the Board in the State of Utah have been held by residents of Salt Lake City employed by the Board and trained by the Board and used on a per diem basis in order to avoid expensive travel.

KAYWOOD CORPORATION

(Case No. 7-CA-792)

LOCAL 793, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, ET AL.

(Case No. 7-CB-134)

On April 21, 1953, Mr. G. L. Sherwood, general manager of the Kaywood Corp., testified before the House Committee on Education and Labor concerning the above cases. Mr. Sherwood stated that the field examiner arrived at the scene 4 weeks after the company filed its unfair-labor-practice charge. He stated further that the Board took no official action whatever for 4 months and that he was under the impression that the Board had no desire to take any action at a time when such official action would be effective. Furthermore, Mr. Sherwood claimed that the Board would not take the step of insisting, in a proposed settlement agreement, that the union call off the strike and that the employees return to work.

On August 11, 1952, the Kaywood Corp. filed its charge (7-CB-134) alleging that the union had violated sections 8 (b) (1) and (3) of the act. The case was assigned to an examiner who returned from his vacation on August 15, 1952. At the time of the assignment the examiner had 5 other charges against companies, 2 other charges against unions, 1 secondary boycott case involving priority, and a pressing assignment of arranging the election for 3,500 employees in the Chrysler Tank Arsenal case which had an immediate effect on national defense. Control of the premises by the Army required arrangements for voting on a location other than the plant premises. At this time the regional office was short handed. The Kaywood Corp. was advised of the examiner's full schedule and after preliminary correspondence relative to arranging for available proofs, the case was scheduled for field investigation to begin shortly after September 4, 1952. It should be noted that the company is located 200 miles from the regional office.

On August 14, 1952, the union filed its charge against the company (7-CA-792) alleging violations of sections 8 (a) (1) (3) and (5) of the act. On September 3, 1952, company amended its charge adding further specific allegations concerning intimidation, restraint, and coercion by the union. From September 9 through September 30 both the company and union charges were investigated in the field and by research by the examiner. Again it must be borne in mind that the examiner had to carry on work in other cases simultaneously with his work in the Kaywood cases.

On October 8, 1952, a proposed settlement agreement was submitted to the union with reference to the company's charge against the union. A copy of this proposed agreement was forwarded to the company's attorney, Mr. Van Aken, with a covering letter which is attached.

On October 21, 1952, the company's attorney notified the regional director that the company and the union had resumed bargaining. Up to this time the company had refused to meet with the union unless the strike was terminated. On the following day the regional director was notified by the union's attorney that it did not agree with the proposed settlement agreement. Subsequently, while preparations were made to issue complaint in the case again the Union and to dismiss the union's case against the company, the regional director received word from the company's attorney that negotiations were proceeding satisfactorily and would include union execution of the proposed settlement agreement. Shortly thereafter on December 4, 1952, the settlement agreement originally proposed was executed by the union and on December 15, 1952, the union withdrew its charge against the company. On December 15 also, the settlement agreement was signed by the personnel and labor-relations director of the Kaywood Corp. The settlement agreement was approved by the regional director and the agreement was complied with by the respondent union.

The nature of the charges and counter charges made during the investigation required detailed and careful study and investigation by the examiner. Based on this investigation and considerations of the proper remedy, the proposed settlement agreement was submitted to the union with the understanding with the company's attorney that in the event the company was not agreeable to the settlement agreement or the union would not sign the agreement the case would then be disposed of by formal action. This understanding was preceded by discussions between the examiner and the company's attorney. The case presented a problem concerning the type of remedy which was proper for a strike which

was violative of the 60-day no strike period set forth in section 8 (d) of the act. No prior cases reflected a remedy suitable to this issue. It was clearly recognized by the company's attorney that if the regional office prepared an informal settlement which included a direction to terminate the strike, the union would not accept the settlement and the case and the strike would be prolonged by the formal procedures available to the parties under Board processes. In this case it was the judgment of the regional director that an informal settlement was the most expeditious and best method of resolving the dispute and the strike.

It should be noted that every effort was made by the regional office, through the examiner assigned to the case, to induce the union to terminate the strike and to return to work at the earliest possible date. Furthermore, shortly after it was determined that the union had violated section 8 (d) of the act and also had violated the contract, the company was advised by the examiner of its right to use self-help pursuant to section 8 (d).

OCTOBER 8, 1952

Re: United Electrical, Radio, and Machine Workers of America (Kaywood Corp.), case No 7-CB-134

JOHN T. VAN AKEN, Esq.,
MESSRS. SEYFARTH, SHAW & FAIRWEATHER,
231 South LaSalle Street, Chicago 4, Ill.

DEAR MR. VAN AKEN: Enclosed herewith for your consideration is a copy of a proposed settlement agreement,¹ which has been submitted to Mr. Ernest Goodman, who represents the UE in the above-entitled matter. A copy of said agreement has been forwarded to Waldo Stager, representative of the UE.

You will note from the contents of the proposed agreement that there is no specific direction of cessation of any existing strike. The omission of such a direction is predicated on the fact, as we discussed recently that there is no prior Board precedent in any matter involving similar issues. In confirmation of our recent conversation, the proposed agreement has been submitted to Mr. Goodman with the understanding that in the event his client is willing, or not willing, to execute the proposed agreement and your client is not willing to execute the proposed agreement, the matter will ultimately be determined by proper authority after formal procedures available to all parties.

In view of the long list of parties named in the charge, your comments in reference to proper signatories on the part of the UE will be appreciated.

Thank you for your cooperation in this matter.

Very truly yours,

JOSEPH KULKIS, *Field Examiner.*

Enclosure.¹

TESTIMONY OF JOHN W. CUMMISKEY RELATING TO CASES FILED IN THE SEVENTH REGION

During the course of his testimony and in his prepared statement before the House Labor Committee on March 27, 1953, Mr. John W. Cummiskey mentioned several cases which had been processed before the Board through the Seventh Regional Office, Detroit, Mich. In addition he referred to the names of other companies in citing examples of employer-employee relationships, but the files and records of the regional office do not disclose that any cases involving those companies were pending at the date of his testimony, or processed prior thereto, dealing with the subject of his testimony.

We take up for answer the following cases which he criticizes in his testimony:

1. *Canada Dry Beverage Co., Grand Rapids, Mich., case No. 7-CA-861*

(At pp. 1874 and 1890 in the record, Mr. Cummiskey protests "taking jurisdiction over this type of enterprise.")

Charge by Local 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL, filed February 9, 1953, alleging violation of section 8 (a) (1) and (5)

Basis of charge: Refusal to recognize, despite offer of proof of majority in unit appropriate for bargaining, coupled with interference with employees' rights.

¹ Not printed.

Company replied to service of charge by letter dated February 14, 1953, advising it was a partnership doing business in the western part of Michigan as a bottler and distributor of carbonated beverages, specifically Canada Dry Ginger Ale, Squirt, and Nesbitt's Orange. It indicated that in 1952, its purchases of raw materials amounted to approximately \$37,000, almost all of which was purchased within Michigan and that its sales amounted to approximately \$75,000, all of which was sold in Kent County, Mich. It employed 14 persons, 5 of whom were part-time employees. It stated it knew the teamsters were interested in organizing its drivers, of whom there were 5 in number.

The company asserted it was not subject to the jurisdiction of the Board and that the unit sought as appropriate for establishing refusal to bargain was inappropriate.

Investigation disclosed there was no merit to the allegation of 8 (a) (1) relating to the employer's interference in causing its employees to withdraw from and disavow the union. No evidence was supplied by the union to support the 8 (a) (5) allegation.

The charge was withdrawn March 24, 1953, at the request of the region.

Comment: Although there was no assertion of jurisdiction in this case, as the matter was disposed of by withdrawal without institution of formal proceedings via issuance of complaint, Field Examiner Kulkis states that he did discuss the question of jurisdiction with Cummiskey and cited several cases in which the Board had asserted jurisdiction over franchise dealers. However, Kulkis took no final position in the matter, replying to Cummiskey's assertion that the amount of business was de minimis, with the assertion that he would take up the matter with this office. It is submitted that Kulkis' reference to the franchise cases, of which Cummiskey stated he was well aware, was warranted by the facts. In implying that jurisdiction would likely be assumed, the field examiner was only acting in accordance with his duty and was following the policy of the Board as established in *Baxter Bros.* (91 N. L. R. B. 1480). Therein the Board had held a franchised dealer to be an integral part of a multistate enterprise, functioning as an essential element in a nationwide system devoted to the manufacture and sale of goods, even though the business may be locally owned and made its sales within the state. See also, *John Bros., et al.* (84 N. L. R. B. 294); *Squirt Distributing Co.* (92 N. L. R. B. 1667); *Seven Up Bottling Company* (92 N. L. R. B. 1622), decided by the Supreme Court (31 L. R. M. 2237), on another ground, the employer having not questioned the Board's power to utilize the franchise theory to assert jurisdiction.

2. *Hekman Furniture Co., Grand Rapids, Mich., case No. 7-CA-659 (101 N. L. R. B. No. 119)*

(Referred to in transcript at pp. 1872, 1876, 1888.)

Charge filed by United Furniture Workers of America, CIO, October 1, 1951, alleging violation of section 8 (a) (1) and (5).

Basix of charge: Company refusal to furnish union with the present rates of all employees in the bargaining unit and their respective classifications.

Charge amended February 11, 1952, to allege the company refused to furnish the aforesaid information to local 415 of the union.

Investigation disclosed union had been designated as bargaining representative of the company's production and maintenance employees as the result of a certification which issued following an election directed by the Board in 1943 (case No. 7-R-1396). It has continued as representative since that time, the most recent agreement being dated September 23, 1950, running until November 1, 1953.

During the course of negotiations leading to the execution of the 1950 agreement the union requested individual wage rate information but the company declined to submit the same, offering only minimum rates. As the result of grievances arising from the disparity in rates for the same classification, the union on August 24, 1951, by letter, requested the company to submit the present wage rates of employees within the bargaining unit and their respective classifications. The company denied the request contending wage negotiations were not in progress and that the wage rates of individual employees were confidential.

The trial examiner's intermediate report of April 29, 1952, and the Board's decision and order of November 26, 1952, are available in which there are recitals of the findings of fact and conclusions of law upon which a violation is found. Mr Cummiskey criticizes counsel for the General Counsel for "interfering with" a settlement or attempted settlement by union and employer of the

dispute between them and insisting the matter be tried. The following facts, which were not stated to the House Labor Committee, explain the position taken by counsel for the General Counsel

During the course of the preliminary investigation, the field examiner (as his file and final investigation report discloses), was told by Mr. Jelle Hekman, president of the company, that it had declined to furnish the wage information requested and had given the union only rates provided in the contract and that its basic motive for such refusal was the fear of losing old and skilled employees if their rates were made public. The field examiner reported that the company felt its position was sound and indicated a desire for a formal hearing. Since the company did not desire to adjust informally, the case was recommended for hearing and issuance of complaint on November 21, 1951.

The region made every effort to settle the case. On January 10, 1952, the then regional director addressed a letter to the company, with a copy to its counsel, advising that complaint would issue unless the company agreed to adjust the charges by January 25, 1952. The informal settlement proposed included bargaining upon request with the union and furnishing a list of all employees in the appropriate bargaining unit showing job classification, hourly rates, and other pertinent wage information in order that the union could discharge its function as exclusive bargaining representative.

On February 4, 1952, counsel for the General Counsel sent a letter to company counsel enclosing a proposed settlement agreement, per telephonic conversation on January 25 in which further time for informal settlement was given, and indicating complaint would issue on February 14 unless adjustment was achieved prior to that date. In the afternoon of February 4, company counsel telephoned the regional office and spoke to the attorney in charge of the case. He advised he had been unable to get the company and the union together on a settlement and indicated he thought it would be necessary to try the case. He was informed of the letter of the same date which was addressed to his office.

By letter dated February 8, 1952, company counsel acknowledged receipt of the letter of February 4, advised of his attempts to work out an amicable settlement, and stated he would get in touch with the region on or before February 14. Not having heard from the company or its counsel by that date, the then regional director on February 15, 1952, issued a complaint and notice of hearing for March 17, 1952.

Subsequent to March 10, 1952, and presumably as a result of negotiations between company and union, the regional office received a copy of a document in the form of a letter dated the 10th addressed to the district director of the union and proposing a settlement of the wage disclosure issue upon the following terms: the company indicated the desirability of a job evaluation program, a study of which had been partially completed, it offered to settle on the basis of furnishing job classifications as well as rate ranges for each job, with the understanding no grievances were to be processed as a result of such information until the evaluation study was completed. The union representative declined to accept the offer.

Hearing on the complaint issued by the regional director commenced at Grand Rapids, Mich., on March 17, 1952, at which appeared counsel for the General Counsel and representatives of the company and the union. The matter was heard by a trial examiner assigned from the Division of Trial Examiners, National Labor Relations Board, Washington, D. C. At the commencement of hearing, counsel for the company represented that the issues contained in the complaint had been settled by the company and union. It appears that this purported settlement sought to adjust the differences between the parties by the submission of rate ranges to the union of each job classification but would not supply individual wage rates except under certain limited circumstances.

On page 1873 of the record, Mr. Cummsky stated that counsel for the General Counsel "interjected" himself into the case, prevented its settlement, and frustrated collective bargaining between the union and the employer.

Of course, since it was the region's case, it had a right to know in what manner it was being adjusted. Certain standards in the settlements of cases must be maintained. As will be shown, the settlement proposal in this case did not meet these minimum standards.

Respondent had failed to provide individual wage rates. This was the unfair labor practice to be remedied and the customary legal remedy would be to require it to do so. As noted above, except under certain limited circumstances this remedy was not provided by the settlement proposal.

Prior to the Heckman case, the region had had several cases based on failure to furnish wage data. For example, in *Wolverine Shoe & Tanning Corp.* (7-CA-545), involving a plant located at Big Rapids, Mich., the region had settled a case on July 27, 1951, on the basis that the employer furnish data setting forth individual wage data.

This raised several problems in connection with the Heckman case. It was clear that a violation of the law, under existing Board and court decisions, existed. Other employers had been required to live up to this requirement of the law. To require one type of remedial action of Wolverine Shoe & Tanning Corp. and substantially less of Heckman under identical circumstances presented more than problems of fairness and equity. If the region accepted less than the normal remedy in the Heckman case, it would be confronted with this fact in subsequent cases and it would be most difficult to obtain normal remedial action in the future. The terms of such settlements become generally known throughout the legal community and either lead to a watering down of the requirements of the statute or claims of discriminatory treatment if different settlements are adopted in different cases.

Further, the respondent's position indicated an intention not to comply with the law in this respect in the future, but rather to deal with this particular case on the narrowest basis possible. Evidence that the settlement offer did not represent a change in attitude on the part of Mr. Cummiskey's law firm concerning this aspect of the law is found in the fact that in *Valley City Furniture Company* (7-CA-786), the attorney who had represented Heckman again took the position that he would not furnish wage data. Thus, enforcement of the Board's Heckman order (101 N. L. R. B. No. 119), if granted by the sixth circuit, will have a wider impact than on just one case, so far as Mr. Cummiskey's firm is concerned.

3. *United Shoe Workers of America, CIO, and its local 75, Martin Eberets, president, Harry Koup, vice president (Wolverine Shoe & Tanning Co., case No. 7-CB-135, and case No. 7-CA-841)*

On page 1888, Mr. Cummiskey stated that a charge filed by an employer against a union dragged along, while a charge filed by the same union against the same employer was expeditiously handled.

The employer's charge was filed in September 1952, based on a work stoppage by a number of employees when an antunion employee was transferred from a particular department. The stoppage was unsuccessful in causing the company to discharge De Vries. A few days later the company discharged a number of participants in the first work stoppage and a strike ensued. However, at the outset of the strike, the union notified the employer that it was not contesting the transfer of De Vries, and was not striking for that purpose, but was striking primarily for the reinstatement of the discharged employees.

Investigation of the charge proceeded during October, November, and December. Superficially, the first stoppage had certain aspects of spontaneity in that it occurred on the same day without any formal union action authorizing the strike. Union responsibility had to be inferred from the conduct of certain union stewards and officers. The company disclaimed knowledge of the duties of the union stewards and it was, therefore, most difficult to establish that they were officers for whose acts the union was responsible under the Board's rule in the *Sunset Linc and Tunc Co.* (79 N. L. R. B. 1487) decision. Other officers claimed that they did not participate in the stoppage but stated that they were trying to settle a spontaneous stoppage and get employees back to work. A large number of witnesses had to be interviewed. As a result, the examiner's final report was not completed until late December.

Meanwhile, however, the union had filed charges alleging a refusal to bargain on the part of the company and a violation of section 8 (a) (3) growing out of the discharge of certain employees who had participated in the work stoppage.

On January 15, 1953, following review by the Legal Division, the field examiner's report on the employer's charge was considered by the regional director, chief law officer, and chief field examiner. It was felt that complaint should issue, although the region felt some close questions were involved.

However, the region was presented with the problem that to proceed with complaint would be dispositive of the union's 8 (a) (1) (3) and (5) charge. Thus, if a complaint were issued that the union had violated section 8 (b) (2) by the work stoppage, a complaint of 8 (a) (3) involving the discharges would be foreclosed. While it appeared that that would be the ultimate disposition of the case, it seemed to be a lack of due process to take such action before hearing the union's side of the case, and disposing of its charge.

The field examiner was instructed to complete his investigation of the union's charges as soon as possible and thus clear the way for the issuance of complaint in the CB case. This is the activity Cummiskey complains of. In fact, the field examiner attempted to complete the investigation in early February, but was prevented from doing so by the illness of Mr. Cummiskey who was not available to represent the company. Other work prevented the return of the field examiner to the vicinity until March 19, when he was able to complete his investigation of the union's charge.

On April 1 the region requested the union to withdraw its CA case, failing which it would be dismissed. On April 6 the regional director wrote the union advising it that unless it settled the CB charge by April 15, complaint would issue. The union's request for an extension of time until April 28 to make its decision on settlement because of the absence of officials at a convention was subsequently granted. Both the union and the company subsequently signed a settlement agreement. The agreement has not been officially approved by the region but has been returned to the union because the region was not satisfied that one of the signatories had authority to bind the union. It is expected to be correctly signed within the next few days.

4. All other cases or situations cited by Mr. Cummiskey, other than those referred to above, either did not involve NLRB cases (it is particularly noteworthy that no secondary boycott charges were filed with the seventh region in the four cases referred to on pages 1897-1898); or dealt with decisions of the Board itself not arising from the seventh region; or dealt with cases in other regions. It would not be proper for the region either to defend or attack the Board's decisions; it is proper, however, to point out that the regional personnel did not make these decisions.

ALLEGED DISPARATE TREATMENT OF INDEPENDENT UNIONS

Mr. Don Mahon, executive secretary of the National Independent Union Council, testified before the House Committee on Education and Labor on March 18 and 19, 1953. Mr. Mahon contended that independent unions are not accorded treatment equal to that accorded to unions affiliated with the A. F. of L. or the CIO. In accordance with the statute and the clear intent of Congress, the General Counsel has sought, in the administration of the act, to accord equal treatment to all parties to proceedings before the agency, whether they are companies, individuals, or unions.

Particularly because the vast majority of labor organizations in the country are affiliated with either the A. F. of L. or the CIO, the General Counsel and the regional offices under his administration have very carefully sought to treat all organizations equally, whether affiliated or unaffiliated. Mr. Mahon's testimony cited a number of cases in which he alleged that agency personnel accorded unequal and unfair treatment to independent labor organizations. The facts in each of those cases are discussed briefly below.

SWIFT & Co.

(Case No. 4-RC-953)

Mr. Mahon testified that the National Brotherhood of Packinghouse Workers was advised by the regional office in the above case of the filing of the petition but that the notice merely gave the case number and stated that the employer involved was Swift & Co., but gave no indication of the particular plant involved. He added that the company had at least 10 plants in the State. Further he claimed that the national brotherhood's letter requesting identification of the particular plant involved was never answered, even though that organization was the certified bargaining agent.

The petition in this matter was filed on October 11, 1950, by the Packinghouse Workers of America, CIO. The petition named the employer with the address of the establishment involved at Harrisburg, Pa. The unit description contained in the petition did not name the location of the plant involved. Local No. 1 of the National Brotherhood of Packinghouse Workers, CUA, was named as the previously certified bargaining agent. On October 12, 1950, the regional office notified Local No. 1, National Brotherhood of Packinghouse Workers, CUA, of the filing of the petition. This notification named the petitioner and described the alleged bargaining unit, but did not specify that the plant involved was at Harrisburg. Investigation revealed, however, that Local No. 1 of the National Brotherhood of Packinghouse Workers was confined to Swift employees at Harrisburg.

On October 29, 1950, A. Leonard, attorney for the National Brotherhood of Packinghouse Workers, CUA, addressed two letters to the regional office in Philadelphia, in one of which he reported that the brotherhood had been notified of the filing of the petition, but desired specification of the location of plant involved. In the other letter Leonard stated that he assumed the plant was at Harrisburg and enclosed a copy of the current contract which he raised as a bar to the proceeding. This letter was acknowledged, and the field examiner handling the case had a telephone conversation with Mr. Leonard in which he confirmed the fact that the petition involved the plant at Harrisburg. Subsequently Local No. 1 of the National Brotherhood of Packinghouse Workers, CUA, received a copy of the notice of hearing and participated in the remainder of the proceeding.

RATH PACKING CO

(Case No. 18-RC-764)

Mr. Mahon's testimony indicates that the regional director of the Minneapolis region of the Board dismissed a petition filed by the National Brotherhood of Packinghouse Workers for a production and maintenance unit of employees at the Waterloo, Iowa, plant of Rath Packing Co. on the grounds that the petitioner had not supported its petition with an adequate showing (30 percent) of representation in the plant. Mr. Mahon claims that his organization submitted authorizations from 1,449 employees in a bargaining unit of 4,500 employees or a representation of 32.2 percent.

The petition was filed on June 9, 1950, and dismissed on July 25, 1950. The petitioner appealed the dismissal and the Board denied the appeal on August 15, 1950. The investigation disclosed that the company's payroll showed a total of 4,800 employees in the unit involved. The petitioner submitted 1,643 authorizations, of which 345 were rejected because they were either unsigned, duplications, or old authorizations dated in 1948 and 1949. Of the remaining 1,298 names, only 875 were found on the company's payroll containing 4,800 names, or a showing of 18 percent. The petitioner was informed, in the letter from the regional director dismissing the petition, of the basis for the dismissal. Mr. Mahon in his testimony quoted accurately from the Board's statement of procedure (sec. 101.17) that it is the Board's responsibility to check the evidence submitted by the petitioner in order to determine whether or not at least 30 percent of the employees have designated the petitioner to represent them. Mr. Mahon merely fails to accept the Board's determination of the fact that in this instance far less than the minimum number of employees uniformly required to support a petition supported the National Brotherhood of Packinghouse Workers.

ST. LOUIS INDEPENDENT PACKING CO

(Cases Nos. 14-RC-1948, 14-RC-2006)

Mr. Mahon, in his testimony, objects to the fact that the National Brotherhood of Packinghouse Workers were subjected to two separate and costly hearings within a few months involving the same plant. The petition in case No. 14-RC-1948 was filed June 12, 1952, by local union No. 700 of the teamsters for a unit of all garage employees. Notice of hearing was issued June 18, 1952, with the hearings scheduled for July 17, 1952. The hearing was held as scheduled and the Board on September 17, 1952, issued its decision and order dismissing the petition for the reason that the unit sought was inappropriate. The petition in case No. 14-RC-2006 was filed August 8, 1952, by United Packinghouse Workers, CIO, seeking a bargaining unit of all production and maintenance employees at the same plant. Therefore, it appears that the second petition was filed after the hearing had been held in case No. 14-RC-1948, and hence it was impossible to consolidate these two cases into one joint proceeding. It should be noted that the Board has no control over the time unions choose to initiate proceedings.

Mr. Mahon also testified that the hearing officer in case No. 14-RC-2006 did not properly notify Local 70, National Brotherhood of Packinghouse Workers, of the hearing, nor did he take proper steps to protect his organization's interest.

During the hearing, the Amalgamated Meat Cutters, A. F. of L., took the position that dock checkers, hog scalers, beef scalers, and small-stock scalers should be included in the production and maintenance unit sought by the CIO Packinghouse Workers. The National Brotherhood of Packinghouse Workers had intervened in the proceeding and was represented by Mr. Mahon. When the issue of the checkers was raised, Mr. Mahon stated that Local 70 of the National Brother-

hood of Packinghouse Workers represented this group; however, he did not contend that local 70 should be made a party and made no motion to intervene on behalf of local 70. While it might have been wiser for the hearing officer to have asked Mahon whether he desired to intervene on behalf of local 70, it would also appear that Mahon, as national president of the local's parent organization, had some responsibility to raise this issue. It is important to note that the Board directed an election in this case in the unit agreed to by the company, the CIO and National Brotherhood of Packinghouse Workers, and did not include the employees represented by local 70.

With respect to the same case, Mr. Mahon testified that the National Brotherhood of Packinghouse Workers was subjected to unfair treatment by the Board in the making of the arrangements for the election directed by the Board. Investigation indicates that the parties to the proceeding were in disagreement as to the time, date, and place of the election. In all elections directed by the Board, the regional director may establish the time, date, and place of the election; however, as a matter of policy regional directors prefer to secure the agreement of the parties to these details if at all possible. In this case the National Brotherhood of Packinghouse Workers requested that the election be held on either November 26 or November 28, 1952. Thanksgiving Day was November 27, 1952. The regional office believed, based on past experience, that absenteeism of employees would be higher than normal on these 2 days, just preceding and following a holiday; therefore, the election date was set for December 3, 1952, a date agreeable to the employer, the A. F. of L. and the CIO.

The CIO insisted that the election should be held off company property and that the hours of the election should be set so that employees could vote going to or coming from work and during the lunch hour. The National Brotherhood of Packinghouse Workers, together with the company and the A. F. of L., contended that the election should be held on company time and property. After investigation it was decided by the regional office that the election should be held on company time and property in accordance with the position of the National Brotherhood of Packinghouse Workers. The election was held on December 3, 1952, as scheduled, and with no unusual incidents. The National Brotherhood of Packinghouse Workers won the election and was certified as the collective-bargaining representative on December 11, 1952.

Mr. Mahon stated that, following a meeting at which the election arrangements were made in case No. 14-RC-2006, two Board agents stated that they were not aware that equal consideration should be accorded to independent unions as compared to unions affiliated with the A. F. of L. and the CIO. The two Board agents deny that they made such a statement, or that, in fact, National Brotherhood of Packinghouse Workers was not given equal consideration in all matters during the processing of this case.

SWIFT AND COMPANY

(Case No. 17-RC-1374)

Mr. Mahon, in his testimony, protested the delay in the processing of the above case in the regional office.

The petition in the above matter was filed by the CIO on June 11, 1952. Mr. Mahon's organization, Local No. 12, National Brotherhood of Packinghouse Workers, was the incumbent organization which had a contract with the company. This organization refused to consent to an election, whereupon the regional office issued a notice of hearing scheduling the hearing for June 30, 1952. On June 24, 1952, the CIO, by its attorney, requested a postponement, suggesting a July 10 hearing date. The regional office informed the parties that it did not look with favor upon requests for postponements and desired to establish a firm date to which all parties would agree. The July 10 date suggested by the CIO was not agreeable to the attorney for the National Brotherhood of Packinghouse Workers. The regional office suggested that the three attorneys get together and decide upon a date which was mutually acceptable and inform the regional office. On June 25, the attorneys for the three parties informed the regional office that they had all agreed upon August 15 as a suitable hearing date, whereupon the regional office postponed the hearing to August 15.

On August 11, the company requested a further continuance because of prior Board commitments. The regional Director indicated that he did not wish to postpone the matter further but in view of the nature of the company's commitments would agree to the postponement if the other two attorneys involved did not object. Mr. Corson, attorney for the National Brotherhood of Packinghouse

Workers, and the CIO attorney both indicated affirmatively that they did not object to the postponement and the regional office reluctantly postponed the hearing to August 27.

Immediately prior to the hearing, Mr. Mahon protested the delays already incurred. He was told that the regional office concurred in disapproving the postponements but that his attorney had agreed to it. Mahon claimed that his attorney had no right to enter into any such agreements. Up to that time it was assumed that the attorney for the National Brotherhood of Packinghouse Workers had the normal authority to make commitments on behalf of his client. The hearing was held on August 27, 1952.

Local 35, IBEW, AFL (Webster Hills School) 1-CD-11

Local 35, IBEW, AFL (University of Connecticut) 1-CD-12

Local 37, IBEW, AFL (M B Foster—Connecticut Light and Power Co.) 1-CD-26

Local 35, IBEW, AFL (Baldwin Stewart Insurance Co.) 1-CD-27

Local 23, Connecticut Union of Telephone Workers (Chase Brass and Copper Co.) 1-CD-29

Local 35, IBEW, AFL (Bross and Co.) 1-CD-30

Mr. Mahon testified that a series of disputes occurred between the Connecticut Union of Telephone Workers and the International Brotherhood of Electrical Workers, AFL, involving jurisdictional problems. He did not state that undue delay was involved, but he asserted that the agency, instead of issuing a cease and desist order after the repeated instances of jurisdictional disputes, insisted upon obtaining a voluntary cessation of the activity and informal withdrawal of the charges.

A review of these cases indicates that they have been handled in accordance with the customary procedures in these matters. Section 10 (k) of the Labor-Management Relations Act of 1947 directs the Board to hear and determine jurisdictional disputes when such a charge is filed, unless " * * the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of the dispute * * upon such voluntary adjustment of the dispute, such charge shall be dismissed." In each of the cases cited by Mr. Mahon the regional office moved quickly and where the actions indicated a violation of section 8 (b) (4) (D), prepared to issue a notice of hearing as provided in section 10 (k). However, in each case, at the insistence of the regional office, the IBEW agreed to stop its illegal activity and did so before the hearing was held, resulting in withdrawal or dismissal of the charge in each instance.

The legislative history of the act and the wording of pertinent sections emphasizes the importance which Congress attached to the voluntary adjustment of jurisdictional disputes without requiring—indeed prohibiting—further formal Board action. The Board's procedures have been formulated accordingly in order to facilitate and implement this congressional intent.

The peculiar nature of jurisdictional disputes requires that they be considered on a case-to-case basis. Thus, a dispute at one site is not necessarily, or even probably, a violation of an agreement reached concerning another site.

GENERAL AMERICAN TRANSPORTATION CORP., TANK STORAGE TERMINALS DIVISION

(Case No. 4-CC-40)

On April 21, 1953, Mr. Joseph N. Cordell, assistant to the vice president of the General American Transportation Corp., testified concerning the handling of a secondary boycott charge involving his company. He stated that in relation to the above case many men from the Board's regional office visited the company after the filing of the charge but that nothing was done for approximately 30 days.

On January 4, 1952, the employees association struck at the Tidewater Associated Oil Co. On February 13, 1952, the striking union began to picket the land entrances of the General American Tank Storage Terminals Division. On February 14, 1952, the company filed its charge alleging violations of section 8 (b) (4). On February 15, 16, 18, 19, and 20 the examiner assigned to the case investigated the factual situation. On February 21 a preliminary report was submitted to Washington setting forth the facts obtained and the rather complex problems of law which they raised. On February 21 the picketing at General American Tank, both by land and sea, ceased and was not resumed thereafter. The investigation continued through February 29, after which time the examiner involved in the

case made intensive efforts to adjust the charge informally resulting in a settlement agreement executed on March 17, 1952. The primary strike at Tidewater continued, however, until April 3, 1952. It does not appear that any undue time was consumed in the investigation of this matter and in arriving at an ultimate settlement. The problems of fact and law in this case included such issues as determining the exact nature of the picketing and a determination of the primary situs of the picketing. As noted above the picketing ceased 1 week after the charge was filed. Therefore, the efforts to secure the settlement agreement thereafter in lieu of issuing a complaint would appear to be preferable. As a matter of policy the agency does not encourage litigation in matters in which the policies of the act may be effectuated equally well by settlements.

GENERAL AMERICAN TRANSPORTATION CORP., TANK STORAGE TERMINALS DIVISION

(Case No. 13-CC-48)

Mr. Joseph N. Cordell, assistant to the vice president of the General American Transportation Corp., testified in the hearings on April 21, 1953, that it took two weeks for the regional office of the Board to have pickets removed from the company's gates in Argo, Ill., after a secondary boycott charge was filed. He stated in his testimony that this was an undue period of time to adjust the situation so that the company could continue to operate.

The respondent union conducted a strike directed against the Standard Oil Co. of Indiana in May of 1952, which included picketing the Argo terminal of General American Transportation Corp. On May 2, 1952, Mr. Cordell's company filed a charge alleging violations of section 8 (b) (4) (A) of the act. On May 2 (a Friday) and May 5 and 6 investigation by the regional office was completed. On May 9 the General Counsel in Washington authorized the issuance of a complaint and an attorney from the injunction section in Washington was assigned to the case. On May 14, 1952, a settlement agreement was entered into by all the parties and approved by the regional director. Therefore it appears that a total of 12 days elapsed from the initiation of the charge by the company and the final complete settlement of the issues in the case. In view of the fact that the General Counsel must present evidence in a Federal district court to secure an injunction in this type of case, he is charged with great responsibility in the careful investigation and evaluation of all the facts; for this reason it does not appear that 12 days constitutes an undue period of time to resolve a complex secondary boycott dispute.

UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOFERS WORKERS ASSOCIATION; AFL AND ITS LOCAL UNION, NO. 11, AND ITS BUSINESS AGENTS, DEAN MOORE AND VANCE STONEMAN, ITS AGENTS AND AGENCIES

(Cases Nos. 13-CC-61, 13-CD-26)

On April 21, 1953, Mr. Roy Fry, owner of Fry & Son, testified concerning secondary boycott charges filed by his company. Mr. Fry stated that a little more than a month after the charge was filed the settlement agreement was completed in which the union agreed to cease the secondary boycott.

The charges were filed September 17, 1952, and amended on October 21, 1952. The preliminary investigation was completed on October 2, 1952, and thereafter the regional office conducted negotiations toward settling the issue between the company and the union. The settlement negotiations included several conferences in the regional office between attorneys for the company and for the respondent union. After considerable effort the regional office effected an informal settlement on October 21, which was approved by the regional director on October 22, 1952. On December 3, 1952, the company raised the problem that the union was not complying in good faith with the settlement agreement. A further investigation was made by the regional office and the parties were advised on January 12, 1953, that there had been compliance with the terms of the settlement. On January 20, Mr. Fry's attorney appeared to the General Counsel to reopen the matter but was subsequently advised by the General Counsel that reopening of the case was not warranted by the facts. It should be noted from Mr. Fry's testimony at the hearings that the settlement agreement appears to have had the effect of reassuring Mr. Fry's customers and as such has permitted him to retain their business.

ARTHUR C. TRASK CO.

(Case No. 13-RM-135)

On April 21, 1953, Mr. Eugene A. Trask, vice president of the Arthur C. Trask Co., testified that his company had filed a petition requesting an election, and that shortly thereafter the union in question wrote a letter in which it disclaimed any right to represent the employees of this company. Mr. Trask complains that immediately thereafter and without consulting the company, the regional director of the Board dismissed the election petition.

The company filed its petition on August 7, 1952. On August 13, 1952, the regional office received a copy of a letter addressed to the company by the union involved disclaiming any interest or right to represent employees of the company. The regional office states that on the basis of this letter the company's attorney was asked to withdraw the petition which was filed by the company since no further question of representation appeared to exist. The attorney refused to withdraw the petition and, accordingly, it was dismissed by the regional director on August 15, 1952, on the basis of the union's withdrawal of its claim of majority representation. The union began to picket the company on August 18, 1952. The company filed an appeal to the dismissal of the petition on August 20. On September 9, 1952, the Board sustained the regional director's dismissal of the petition, giving as its reason that the picketing was for organizational purposes and did not contradict the union's disclaimer of interest and that there was neither a present claim to represent the employees involved nor a request for bargaining which would give rise to an obligation on the part of the employer to recognize the union as the representative of its employees.

MASONITE CORP.

(Case No. 15-CA-333)

On Friday, March 20, 1953, Mr. John G. Curren, representing the Southern Pine Industry Committee, testified before the committee with respect to this case. Mr. Curren charged that regional personnel had usurped the functions of the Federal Mediation and Conciliation Service in mediating a strike situation.

Collective-bargaining negotiations between the Masonite Corp. and the International Woodworkers of America, CIO, on January 1, 1951, and a strike of some 3,000 employees ensued. A charge alleging violation of section 8 (a) (1) and (5) of the Labor-Management Relations Act of 1947 was filed against the company. After investigation, the region issued a complaint on February 13, 1951, with the hearing scheduled for February 27, 1951. This speed was necessary in view of the strike, affecting as it did the State of Mississippi's largest employer.

Immediately after issuance of the complaint, the regional director and the field examiner met with the parties separately and together in an attempt to effect a settlement of the charge, which was based on certain adamant positions the company had adopted during bargaining which were in contravention of the statute. Regional personnel withdrew from the scene, and the hearing was postponed indefinitely when the company agreed to conform its actions to the statute.

These settlement meetings took place during a recess in sessions in which the parties had been meeting with representatives of the Federal Mediation and Conciliation Service. Although the region had been able to adjust the charge, other strike issues kept the parties apart, and Federal Mediation personnel returned to the scene. Through their efforts, the company and the union reached a contract on March 23, 1951, long after regional personnel had withdrawn, and the strike then ended.

Later, company Vice President John M. Coates wrote to the field examiner that the company "very much appreciated the long hours you and Mr. LeBus put in on the case when we were trying to bring this to a head during my first trip down there. I felt a bit guilty over exposing you people to the long and tedious hours that this fracas always works into, but I was nevertheless glad for the opportunity to have your office take a "look in."

BACHE BROS. LOGGING CO.

(Cases Nos. 19-CB-224, 19-CA-713)

Mr. George J. Tichy, secretary and manager of the Timber Products Manufacturers Association with headquarters in Spokane, Wash., testified before the committee on March 20, 1953. Mr. Tichy criticized the regional office in the

handling of cases involving the Bache Bros. Logging Co. He claimed that the Seattle office improperly permitted the union to withdraw a representation petition after an election had been agreed upon. Further Mr. Tichy argued that the regional office sanctioned and urged the withdrawal of meritorious charges filed by the employer against the union in exchange for the withdrawal of baseless charges filed by the union against the employer.

The specific cases referred to by Mr. Tichy involve the Bache Bros. Logging Co. of Libby, Mont., and Lumber and Sawmill Workers Locals 2581 and 2662, A. F. of L. and the Montana District Council, Lumber and Sawmill Workers, A. F. of L.

The Bache Bros. Logging Co. is located near Libby, Mont. Early in 1952, the lumber and sawmill workers organized the employees of this employer and on January 21, 1952, filed a representation petition which resulted in a consent election agreement being signed on March 26, 1952. The consent election agreement did not provide for the election to be conducted on any specific date. At the time the election agreement was entered into, the operation did not have its full complement of employees nor was it operating at a normal level. The agreement provided for the date to be set by the regional director and "to be subsequent to completion of one full pay period and when crew is at normal level." The election was finally scheduled for June 3, 1952, after the regional office had been informed by the employer that he was operating at a normal level. Immediately after determining upon this date, the union protested the holding of the election at that time, claiming that the conditions of the consent election agreement had not been met. The election was postponed for 1 week to June 10, 1952. Robert C. Weller, the union's business representative, still contended that the conditions of the consent election agreement had not been met and requested withdrawal of his petition. Withdrawal was accepted and the case closed in that manner on June 12, 1952.

After the company resumed operations in the summer of 1952, the union again renewed its organizational activity and presented to the company evidence that it represented 10 of the company's 16 employees, and made a demand to be recognized and requested the negotiation of a contract.

The union and a number of the employers in the Libby, Mont., area held a meeting on September 2, 1952, for the purpose of discussing a contract, and scheduled a further meeting for September 8, 1952. One of the employers in the area was not present at the September 2 meeting and that is the reason for setting a further meeting for September 8. In the interim, however, the employers had filed representation petitions and notified the union they did not intend to meet with the union pending an election. The union contended, and it so appeared that the employers had agreed to bargain with the union on September 2; that the union did represent a majority, and the failure to attend the September 8 meeting constituted a refusal to bargain.

When the employers failed to appear at the September 8 meeting the union immediately set up a picket line and blocked the roadway going to Bache Bros. logging operation. The roadway was blocked for several hours, and, as a result of this activity on the part of the union, the company filed charges against the union on September 18, 1952. This is case No. 19-CB-224. On September 24 the union filed charges of refusal to bargain against the Bache Bros. Logging Co. This is case No. 19-CA-713. The roadblock referred to took place for only several hours on 1 day, and subsequent to this peaceful picketing was carried on. There has been no allegation that the picketing subsequent to the roadblock incident constituted any violation of the act.

The regional office carried on extensive investigation of both cases and, not being able to perfect any settlement, decided to issue complaint both against the employer and against the union. Complaint against the employer did issue on February 17, 1953. The hearing was scheduled for March 10, 1953. The regional office was also prepared to issue complaint against the union shortly thereafter. Before issuing that complaint, however, the attorney handling these cases contacted both Mr. Weller and Mr. Tichy, informing them that the complaint against the company had issued and that a complaint was going to issue against the union. Mr. Weller inquired whether the matters could be disposed of without formal hearings, and stated that if the company would withdraw its charges the union would likewise withdraw. The attorney relayed this information to Mr. Tichy and subsequently withdrawals were received on all cases and were approved. It appeared that if the cases were withdrawn the parties could work out the controversy in an amicable manner without the necessity of governmental intervention.

Mr. Tichy stated that the attorney told him that the only thing the Board could do, in the event an order issued against the union, was to require the union to post a cease-and-desist order in the union hall and that the employees would merely laugh at it. Attorney McIntyre, who handled the matter, states that he did tell Mr. Tichy what he deemed would be the type of order the Board would issue, but he did not state that such an order would be ineffective and that the employees would merely laugh at the posting of a notice.

SONOMA-MARIN DAIRYMEN'S ASSOCIATION, INC.

(Case No. 20-CC-74)

Matt Triggs, assistant legislative director of the American Farm Bureau Federation, testified before the committee on March 16, 1953. Mr. Triggs testified that it took the Board 2½ months to issue a cease-and-desist order in the above case involving a secondary boycott.

Sonoma-Marín Dairymen's Association, Inc., herein called the Dairymen's Association, filed a charge on September 6, 1950, alleging that Teamsters Locals 302, 386, and 439 had violated section 8 (b) (4) (A) of the act. The charge was later amended to drop the allegation against Local 439. The primary dispute arose out of an attempt by another teamsters local, Dairymen and Creamery Employees Local No. 304, herein called the Milkers Union, to organize the employees of dairies located in the San Joaquin Valley whose normal outlet is to the grade A plants in the East Bay area. Local 304 is made up entirely of agricultural laborers, and the employees of the dairies it was seeking to organize were all agricultural laborers. The charge was brought by the Dairymen's Association, whose membership includes the operators of the dairies involved in the dispute with local 304, alleging illegal secondary boycotts of the grade A plants in the East Bay area and grade B in the San Joaquin Valley. The employees of the grade A plants were represented by Teamsters Local 302, and employees for the grade B plants were represented by Teamsters Local 386, each of which bargains with a separate employer association. The Milkers Union had been picketing the dairies and had been inducing drivers at the premises of the dairy owners to refuse to haul milk.

The investigation by the regional office disclosed that the dairies picketed had been placed on an unfair list and that in certain instances, locals 302 and 386 had directed employees of the grade A and grade B plants to refuse to handle milk brought in from the picketed dairies. The matter was extremely involved and required an extensive investigation. Nevertheless a preliminary investigation report was completed on September 18, 1950. At that time complete information concerning jurisdictional facts, which were somewhat complicated, was not available. The commerce information was finally obtained from the charging companies. Thereafter, a petition for an injunction under section 10 (1) was filed on October 26, 1950, in the district court. On November 4, 1950, an informal settlement agreement was executed by the two respondent locals of the Teamsters and by the charging parties. Such settlement provided in substance that the respondent unions would abandon their attempts to induce employees at the grade A and grade B plants to refuse to handle milk brought in from the dairies. Thereafter, the district court entered an order dismissing the petition for temporary injunction under section 10 (1). It may be seen, therefore, that no cease-and-desist order was issued by the Board and that it did not take 2½ months for effective action to be taken by the Board in this matter. It should be noted that the General Counsel has a serious responsibility, which includes the time-consuming task of careful investigation and affording both sides due process, before preparing a case for presentation in the Federal district court to secure an injunction.

WHBQ, RADIO STATION OWNED AND OPERATED BY HARDING COLLEGE

(Case No. 32-CA-159)

On April 2, 1953, Mr. George S. Benson, president of Harding College, Searcy, Ark., submitted a statement to the House Committee on Education and Labor in which he criticized the handling of the above-entitled case.

The charge in this matter was filed on November 3, 1950, by the International Brotherhood of Electrical Workers, AFL, alleging violation of section 8 (a) (1), (3), and (5) of the Labor-Management Relations Act of 1947. The first field examiner to whom the charge was assigned was transferred to another area prior

to his completion of the investigation. He was able, however, to indicate preliminarily that there appeared to be no merit to the refusal to bargain charge, but that there was merit to the charge that the employer had interfered with the rights guaranteed to employees by the act. His investigation of the discharge of the one employee involved was not conclusive.

Reassignment of the case was delayed by lack of personnel at that time, and an unfortunate delay occurred. Ultimately, however, the second field examiner concurred in the recommendations made so far and in addition concluded that the employee had been discriminatorily discharged. The legal staff in the region concurred, and complaint was issued August 7, 1951. The matter came on for hearing before Trial Examiner Lee J. Best on September 21, 1951.

On December 4, 1951, the trial examiner issued his intermediate report wherein he found interrogation in violation of section 8 (a) (1) and that the employee had been discriminatorily discharged in violation of section 8 (a) (3). Exceptions to the intermediate report were filed, and on June 26, 1952, the Board affirmed the trial examiner's findings.

Extended and friendly attempts to secure compliance with the Board's order ensued. In October 1952, the matter was transferred to the General Counsel's enforcement section. On March 3, 1953, a petition for enforcement was filed in the Sixth Circuit Court of Appeals. The respondent's answer was filed March 21, 1951, prior to Mr. Benson's statement to the committee, although he stated therein that the Board had not applied for enforcement, and the company could not afford to. The case was argued and the issues are now awaiting decision, including the point of service raised by Mr. Benson.

As for Mr. Benson's various charges that the company was "tricked," "framed," and "smeared," we cannot believe that he meant to leave the impression that the field agents of this Agency engaged in such activities. One other statement of President Benson needs clearing up. As this committee knows, the National Labor Relations Board does not "bring its charge, try its case, and pronounce its decision." The charge is filed by a private party. It is investigated and tried by representatives of the independent General Counsel. It is heard and adjudged by a trial examiner unknown to and independent of the trial attorney or the General Counsel. And, if appeal is taken, it is decided by a Board which had nothing to do with investigation, trial or hearing of the complaint. And finally, which is the present status of this case, it can be reviewed in the entirely independent judicial system of this Nation

STATEMENTS SUBMITTED BY REGIONAL OFFICES LOCATED IN DETROIT, LOS ANGELES, SEATTLE, AND WINSTON-SALEM

MAY 4, 1953.

To: George J. Bott, General Counsel.

From: Harry N. Casselman, director, seventh region.

Subject: Review of activities of the seventh region (Detroit, Mich.).

1. PERSONAL INTRODUCTION

My name is Harry N. Casselman. I have been regional director of the seventh regional office since April 1952. I am 40 years old, married, and have 3 children. I spent my formative years in Detroit, attending local grade and high school. I graduated from the University of Michigan with B. A. degree in 1935 and from the University of Michigan Law School in 1937 on a combined curricula. My father was a builder and contractor for over 50 years, building hundreds of homes, apartments, and other structures in the United States and Canada. For this purpose, he maintained crews of from 100 to 200 men. Many of the men employed by him as building tradesmen are now prominent builders. In the early thirties, my father was severely affected by the depression and I went to work for the Chrysler Corp. to finance my education. I obtained the job at Chrysler by virtue of recommendation from the dean of men, University of Michigan. I learned a great deal about industrial relations in working for the company and became interested in a career in this field. I worked for Chrysler until graduating from college. I started with the National Labor Relations Board in 1937, as a field examiner, and transferred to the legal staff in 1939. I have worked in various parts of the country for the Board including Cleveland, Akron, Denver, Salt Lake City, New York City, and Detroit. I served in the United States Navy from 1942 through April 1946 as a gunnery officer

and executive officer. Over 2 years of this time consisted of overseas duty in the Pacific invasion campaign. I left the Navy as a lieutenant, senior grade.

In September 1949 I was appointed chief law officer of this region by Robert N. Denham, then General Counsel. I was appointed regional director by George J. Bott, the present General Counsel, in April 1952, shortly after the death of Frank H. Bowen, who had been the regional director from 1936 through April 1952.

I am a native Detroitier and I take pride in doing everything possible to maintain industrial peace in the area and to administer the statute in a completely impartial and evenhanded manner no matter who the parties are.

II. STAFF PERSONNEL

The professional staff of the office consists of 8 field examiners and a chief field examiner, a chief law officer, and 5 attorneys. Their names and dates of hire are as follows:

Field examiners:

Cecil Pearl (Chief Field Examiner)	1942
Joseph Kulkis	1937
Ruth Greenberg	1937
Russell Bradley	1948
Lyon K. Scott	1948
Lloyd K. Porterfield	1948
Iris Meyer	1948
Charles Steere	1953

Attorneys:

William T. Little, chief law officer	1939
Herman Gorenman, principal attorney	1949
Emil C. Farkas	1946
Herbert C. Kane	1944
William E. Rhodes	1950
Robert Pisarski	1952

III. GEOGRAPHICAL AREA COVERED

This region covers the Lower Peninsula of Michigan. Of the State's total of 85 counties, 68 are in the Lower Peninsula. The heaviest concentration of industry is in the Detroit, Saginaw Valley, Jackson, Grand Rapids, and Kalamazoo area.

IV. INDUSTRIAL AND ORGANIZATIONAL PICTURE

(a) *Nature of industry and its location*

The bulk of Michigan manufactures are produced in the southern half of the Lower Peninsula. Detroit leads in manufactured products, chief among which are automobiles and trucks, railway cars, stoves and furnaces, drugs, chemicals, tobacco, furniture, food, and clothing. This is also a center for shipbuilding, which is also carried on at Bay City, Port Huron, and Wyandotte. Outside of Detroit, the automobile industry and its suppliers has extended to such centers as Pontiac, Flint, Saginaw, Bay City, Lansing, and Grand Rapids.

In the northern part of the Lower Peninsula, lumber and timber products are manufactured, although small manufacturing plants engaged in other activities have been and continue to be established in the area. Over 150 furniture plants are distributed in 30 cities in the State, among which Grand Rapids leads. The manufacture of paper is chiefly carried on in what is known as the Kalamazoo Valley, Ypsilanti, and Monroe. Oil fields and refineries are located in the north central part of the State. Machine shop products are made chiefly in large cities outside Detroit in southern Michigan. Flour and grist-mill products are made in abundance in all parts of the State. Food products are produced mainly in Battle Creek, Detroit, and in towns located in western and southern Michigan.

(b) *Labor organizations*

The UAW-CIO is the largest labor organization in the State, as a result of the mass production techniques instituted by the automobile industry. Its organizational efforts have been along vertical lines. UAW-CIO has likewise organized automotive suppliers, including tool and die shops, on a similar basis. The chief

segment of UAW-CIO membership resides in Michigan, concentrated as it is in the plants of the three largest manufacturers of automobiles and trucks, and in those of the closest suppliers who supply the industry with innumerable items which make up the finished products. Establishment of the umpire system in collective bargaining apparatus and the institution of long-term agreements have in the main brought about a significantly healthy trend in the industry as a whole. Most of the other unions, AFL and CIO, as well as a number of independent unions, function in the State although all have a substantially smaller membership than the UAW-CIO.

(c) Acceptance of the act

AFL, CIO, and other unions, which seek to organize in some large cities and in small communities outside metropolitan Detroit meet with considerable resistance. Application of the act to unions and employers there is more strongly resisted than in the Detroit area. Resistance to organization is more frequent in the western, northern, and central sections of the State. In the Grand Rapids-Holland area, and to a lesser extent in and around Kalamazoo, opposition to unions is widespread. Elsewhere, out-State, establishments in small communities in rural areas which draw from the farm population for labor supply, frequently lack knowledge of the purposes of the act and the rights guaranteed to employees, employers, and unions. For the past several years approximately half of the regional office case load originates outside the Detroit area, although the larger cases arise in metropolitan Detroit.

(d) Organizational pattern

The success of the UAW-CIO and CIO affiliates in the last 15 years has spurred many AFL and other labor organizations to organize on an industrial basis. Traditional craft groups have sometimes organized vertically or in the alternative have sought to sever crafts from existing industrial bargaining units.

Rivalry between CIO and AFL unions continue and raids still persist, one on the other. However, the recent Board decision holding 5-year contracts in the automobile industry as reasonable in duration and therefore a bar to elections, has stemmed, for the time, basic unit disputes in the representation field in the automobile industry.

V ACTIVITIES OF THE OFFICE

From the outset of my relation with this agency and as a public servant, I learned to conduct myself under the benevolent and extremely able tutelage of Frank H. Bowen, Director from 1936 through 1952. Bowen was revered by industry and labor alike. Bowen had a long career with the automobile and newspaper industries before starting with the Board. He started with the Board during the anarchy of the sitdown strikes and by his tact and understanding of human nature, was a very large factor in settling some of the earliest and fiercest strikes. General Motors, Chrysler, and Ford officials will confirm the role he played in that regard. He always taught his staff the Golden Rule of labor relations—absolute integrity, complete impartiality, and a devotion to labor peace through the effectuation of statutory purposes. He taught his staff to treat all men with courtesy and kindness. He also taught his staff to make every effort to settle contested issues where violations existed without fanfare. Although he had newspaper experience, he religiously kept cases out of the newspapers and shunned publicity, partially out of a sense of fair play and regard for the rights of the parties, and partly because of a deep conviction that it would aggravate and not facilitate case handling before the agency and the courts. It is extremely significant and interesting to note that although the Board went through a stormy career from its inception and was criticized freely in the press, including the Michigan press, there was no criticism of the Detroit office and its case handling methods, although it operates in the heaviest concentrated industrial area in the country and probably in the world. Among his other accomplishments, he was a potent factor in causing the acceptance of the umpire system in the auto industry contracts, thereby substituting arbitration for strikes in countless instances. Because of his tremendous contributions, the Detroit press, including the News and Free Press on the occasion of his death wrote fine editorials praising his impartial and able handling of the region. Because I think they are extremely significant in this context and because they show the tone of the office, I am repeating their content here.

Detroit Free Press, April 22, 1953, lead editorial:

"FRANK H. BOWEN

"After the wild rioting of the sitdown strikes, when all the world was proclaiming 'the revolution' was being launched in Detroit, with the Wagner Act as the law of the land, Frank H. Bowen, a retired New York newspaperman, was appointed regional director here of the National Labor Relations Board.

"Everybody agreed that the head of the new job was dancing on dynamite.

"Bowen knew nothing about labor relations, made no pretense that he did, and had no preconceived ideas of his tasks. He entertained no isms and was neither right nor left. He did know human nature and had high faith in the ultimate commonsense of both worker and manager.

"My only job," he often said, "is to do what I can to maintain industrial peace."

"His impartiality and sweet reasonableness did much to achieve his high aim—taking on the Taft-Hartley Act in the same quiet way he did the Wagner Act—without bombast or headline seeking.

"And now at the age of 80, death has come to him. In two brief decades America and the world have changed. Bowen's only assets were a profound faith in God and his fellowman, buttressed with commonsense—the rarest of virtues in these days. The tragedy of our times is that there are not more men in public office with such gifts."

The Detroit News, April 25, 1952

"FRANK H. BOWEN

"Since the death of Frank H. Bowen last Saturday, at the age of 80, the commentator has heard more about him than during his lifetime. As he gets the story, Mr. Bowen was a far greater man than the community realized.

"He had retired as a car distributor 19 years ago when the late Senator Wagner, of New York, who had known him as a newspaper, persuaded him to enter the Government service as a conciliator of capital and labor. The NRA's original plan fell down; the Wagner Act was passed, and Mr. Bowen was sent to Detroit as supervisor of this regional office, 1 of 21 throughout the country.

"The job was tough until industry got Mr. Bowen's measure and found that he was not a fighter for labor, but an enforcer of the law. Carefully he explained what the law provided, and the necessity of obedience. When industry understood, it cooperated, the more willingly when it found that Mr. Bowen was absolutely fair. The going was better after the Supreme Court held the act constitutional; and it was then that Mr. Bowen's name fell out of public prints, because his office ran like an electric clock and there were no fights to get into the papers.

"'Everybody loved the man,' said one of the commentator's informants. 'Capital and labor equally regret his death. He was the greatest administrator I have ever known.'"

Some of the most important early cases to reach the Board were tried in this area including the Fruehauf Trailer and Ford Motor Co. cases and many others. The first large consent election was run in this area at the Packard Motor Car Co. in 1937. This region has conducted the largest elections ever held by the Board in the General Motors, Ford, and Chrysler plants. The last General Motors election involved over 150,000 eligible voters throughout the United States. These elections were models of efficiency and every precaution was taken to see that they were absolutely secret and completely fair. Our election procedures have been widely praised by both industry and labor.

It has always been the policy of this office to promote industrial peace and progress by bringing home to the parties the realization that statutory rights carry with them correlative duties of fair treatment of employers, unions, and individuals alike. We have learned to know the individuals well who represent both sides and as a result we have been able to avoid many strikes which would have occurred except for our advice and counsel. As a result of a long relationship based on mutual trust and respect, representatives of industry and labor seek our informal advice and counsel in avoiding labor strife and learning their rights and obligations under the law. We have always counseled and practiced moderation and fair play.

After the amendments of 1947, every effort was made in the office to induce unions to comply with the letter and spirit of the law as its provisions received Board and court interpretation. As the best example, I cite alleged secondary boycott and jurisdictional disputes. In many cases, employers have consulted me personally when they were affected by such activities and when their manu-

facturing operations urgently required speedy termination of them. On these occasions, I have gotten the facts as quickly as possible from the employer, and then called the union involved and received their version of facts. If there was a violation on the facts, I have customarily advised the union that it must terminate the alleged secondary or jurisdictional strike at once or face swift and vigorous enforcement of section 8 (b) (4). If the facts or the law was doubtful, I did not press for action until a determination could be made. In this manner, I have caused the termination of approximately 20 such strikes, many in key defense establishments within the matter of 48 hours. I feel that this informal and less time-consuming approach is most effective in effectuating statutory objectives. I refer you to the following by way of example. At the request of Mr. Van Treese, Industrial and Labor Relations Department, Detroit Ordnance District, I succeeded in ending a secondary boycott at the main plant of Chrysler Corp. in February 1953, instituted by the teamsters union within 48 hours of a call by Van Treese and advice that vital defense material was involved which deeply concerned the Defense Department of the Army. I am advised that Van Treese issued a full report to Army headquarters in Washington crediting this office with terminating this boycott.

By the same method, I terminated a jurisdictional strike within 24 hours affecting several thousand workers at the Chrysler Navy jet-engine plant. I acted at the request of Attorney Leon Lewis of Love, Snyder, and Lewis, 1840 National Bank Building, Detroit, Mich., who represented Dearborn Fabricating Co., which was the employer-subcontractor directly involved in the jurisdictional dispute between the riggers and millwrights. This occurred on November 15, 1952.

In June 1952, I caused termination within 48 hours of a jurisdictional strike between the structural iron workers and millwrights at the Livonia Ford tank plant and at the Wayne, Mich., jet-engine plant of the Ford Motor Car Co. I acted at request of Mr. John Kinsella, counsel for the Associated General Contractors of America, 1437 Book Building, Detroit, Mich., and Mr. Foster Winter, Clark, Klein, Brucker, and Waples, 2850 Penobscot Building, Detroit, Mich.

I have caused the termination of several other secondary boycott situations for both Mr. Kinsella and Mr. Winter, involving General Motors jet-engine, national defense plants, and other companies. Both of these men have expressed deep appreciation for our speedy and effective action.

Where it appeared that nothing but formal action would be effective, we moved as quickly as possible. The first injunction in this region in a secondary boycott case was obtained in the *Osterink* case (7-CC-2), the second 8 (b) (4) case filed here. This set the stage for effective termination of boycotts without the necessity of formal action in subsequent cases as set forth herein.

VI. RELATIONS WITH INDUSTRY

Since affiliating with the agency, I have carefully followed Mr. Bowen's techniques for effectuating statutory purposes and maintaining good public relations. I can say without fear of contradiction that the same good will of all groups—industry, labor, individuals, and the general public—has been maintained since Mr. Bowen's passing from the scene. Our relations with industry and labor, large and small, has been excellent. Good examples are the law firms of Beaumont, Smith & Harris, 1100 Ford Building, Detroit, Mich., which act as counsel for the Michigan Manufacturers Association and handle labor problems of their members, large and small; Clark, Klein, Brucker & Waples, 2850 Penobscot Building, Detroit, Mich.; Goldman, Lieberman & Brabow, 1774 National Bank Building, Detroit, Mich.; and Colombo, Colombo & Colombo, 2715 Cadillac Tower, Detroit, Mich., representing small and large industrial firms in this area.

The following individuals in industry have openly expressed their gratitude because of the fair attitude and the service rendered their clients by this office: John Williams, executive secretary, Plumbing and Pipefitting Industry of Michigan, 1510 Stroh Building, Detroit, Mich.; Richard Forsyth, 1556 Penobscot Building, Detroit, labor-relations consultant for the brewery and many other industries. Mr. Robert Bratton, general manager, Den-Art Tool Co., 23811 Telegraph Road, Detroit, Mich., has had many occasions to consult this office in behalf of a small tool and die concern which has had many difficulties with the UAW-CIO and has often expressed his gratitude for approach taken; Asax Manufacturing Co., 4725 Ellery, Detroit, Mich., of the furniture industry has had occasion to consult this office and has praised the office for solutions of labor problems arising out of UAW-CIO organizational campaigns. Smith Envelope Co., through its counsel, Foster Winter, (Clark, Klein, Brucker & Waples), 2850 Penobscot Building,

Detroit, has recently been very gracious in recognizing the quick sympathetic and earnest consideration given to its strike problem involving the teamsters union.

Example of good relations with firms located outside Detroit are: McKone, Badgley, McNally & Kendall, 1100 Jackson City Bank Building, Jackson, Mich., representing many firms in the Jackson, Mich. area; Warner, Norcross & Judd, 300 Michigan Trust Building, Grand Rapids, Mich.; Varnum, Riddering, Wierengo & Christenson, 1000 Michigan Trust Building, Grand Rapids, Mich.; and Schmidt, Smith & Howlett, 330 Michigan Trust Building, Grand Rapids, Mich.; all of these firms represent small- and medium-sized employers in the Grand Rapids, Mich. area and Edwin G. Gemrich, 222 South Westnedge Avenue, Kalamazoo, Mich., representing employers in the Kalamazoo area.

For larger firms themselves, I have no doubt that Mr. Colbert, president of Chrysler, and Mr. Leary, director of industrial relations, would certainly advise of the impartial and helpful attitude of this office in labor problems under the statute. The same is true of General Motors. We have had extensive direct dealing with Harry Benjamin and William Oldani, handling labor relations for the firm, and indirectly with Mr. Harry M. Hogan, General Counsel. I have no doubt that the Ford Motor Co. would express the same view. Most of our dealings have been through Malcolm Denise, its associate general counsel, who was an industry member on the National Wage Stabilization Board.

The firms and individuals cited are merely by way of example. I am fully confident that a cross section of law firms, companies, and individuals who have dealt with this agency locally will attest to the impartial and helpful attitude of the staff of this office and its faithful execution of the letter and spirit of the statute.

VII. TRAINING OF PERSONNEL

Each employee is required to be thoroughly familiar with the manual of case procedures issued by your office and revisions thereof. Weekly conferences are held each Monday afternoon of the entire staff (including clericals only when problems arise involving them). Case-handling techniques and problems are discussed, policy questions are resolved, any problems of staff members are thrown open to discussion. Public relations is always stressed at these conferences as well as in personal contacts with staff members. At these conferences current Board and court cases are discussed and current instructions of General Counsel and undersigned are reviewed whenever necessary.

The legal staff receives periodic group instructions from the chief law officer on trial techniques, individual problems of evidence, public relations, and related problems. I am advised that the General Counsel's Washington staff is instituting legal clinics for field attorneys. On-the-job training programs are in effect and more experienced personnel supervise and assist activities of newer and less-experienced staff members.

We have been exchanging information with other related Government agencies, State and Federal, to learn details of their operations for the purpose of advising the public as to the proper agency for handling of their problems when it is clearly outside our scope and to better coordinate relationships with such agencies.

VIII. REGULATION OF ACTIVITIES OF PERSONNEL

Case assignments are made by the chief field examiner under the supervision of the undersigned. Periodic checks on investigation, daily, weekly, and monthly, are made by the chief field examiner and the Director, pointing up techniques; General Counsel and field instructions; and statutory policies and statutory priorities in case handling. Field trips are undertaken only upon showing of necessity after clearance with chief field examiner, Director, or, in the case of attorneys, the chief law officer. Great care is exercised to check compliance with 9 (f), (g), and (h) of the act at every stage, and any attempted evasions are closely scrutinized. Field examiners are instructed on settlement techniques, and chief field examiner or Director intervene whenever advisable to assist in settlement. Care is exercised to assure full compliance with the Administrative Procedure Act. This control program is also to insure complete and fair opportunity for both sides to present their evidence. Settlements are a prime objective, but where prima facie violations do not exist or questions concerning representation are not present dismissal or withdrawal is required rather than settlement. Files are completely reviewed as often as physically possible. Whenever necessary, attorneys advise field examiners and assist in legal problems arising on close questions of law.

Criticism of staff personnel is very unusual. However, on the very few occasions during my tenure as Director where such criticism was made, I have immediately investigated and made such corrections as necessary. In the only instance of serious criticism against a field examiner alleging bias, the charge was made by a union and upon further investigation by the union, it was withdrawn by letter as completely unfounded. This office and staff are very sensitive to their role as public servants and every effort is made to properly serve the public courteously, fairly, and effectively, yet ever mindful of the necessity of effective enforcement of the statute, regardless of who may be charged with violating the law. Although the UAW-CIO is by far the largest union in members in this area and has many conflicts with the A. F. of L. and other unions, I deem it very significant that the relation of this office with A. F. of L. and other unions including the building trades has been and continues to be excellent, and at this late date even "strategic" criticism is practically nonexistent.

IX EFFORTS TO ACCELERATE CASE HANDLING

The big problem plaguing the agency both locally and nationally which has resulted in the criticism for years has been the problem of slowness of procedure. Some of this is inherent in the statutory scheme, and its procedural requirements. Much delay is caused by the fact that parties know Board orders are not self-enforcing and must be supported by court order before any sanctions attach. This has led to delaying tactics by respondents, and caused further delay. Within these limitations more and more emphasis has been given for several years to process cases, informal or formal, at the fastest possible pace, bearing in mind the necessity of maintaining quality in investigation and formal procedures. Cases have definitely been processed more rapidly since the act was amended in 1947.

This region has had its field examining staff reduced by half since 1949, although there has been no corresponding reduction in intake in that period (aside from the cessation of union-shop election cases after the Taft-Humphrey amendment of 1951). The reductions were caused by budgetary and other considerations, of which I am in no way critical, but it is only fair to point up the increased pressure on each examiner, particularly in view of the accelerated case procedures.

There has been constant pressure to complete the processing of older cases. This has been rendered difficult by the requirement of giving top priority to 8 (b) (4) (secondary boycott and jurisdictional dispute cases) and second priority to representation cases.

The most dramatic results are of course in the representation case procedures on a national as well as a local basis. This office has been in the top group in expeditious processing of these cases.

Constant pressure has been maintained to advance each unfair-labor-practice case each week, but special problems arise requiring priority because of statutory priority of national defense, serious strike situations, etc. These are met as quickly as possible but when several priority cases occur simultaneously and there are not enough examiners available to handle them all at once, some delay must result. The public is critical of delays, nationally and locally. However, no known technique is being left untried to improve and accelerate case handling. We have tried requiring examiners to complete investigation of each case before proceeding to the next, arranging for evidence to be produced on all current cases by advance correspondence. This technique of completing each case is sometimes useful but has limitations where priority cases arise in the interim and where investigations bog down because of complications in immediate availability of proof or procedural or legal problems. Pressure is, of course, maintained for charging parties to present prima facie evidence within 72 hours but rigid adherence would result in inequities in many cases. Then too, varying experience and competence of examiners is a limiting factor on the cases assignable to them. The training program is, of course, eliminating this factor in most cases. With a view to expediting cases we have instituted the agenda program wherein long investigation reports are eliminated and an agenda group, consisting of Director, chief law officer, and chief field examiner are deciding case disposition on oral report of field examiner, subject to final legal review. We have been pursuing this system for the past 5 months with good effect. However, speedier case handling will always be an objective and we are all looking forward to the new procedures for handling unfair-labor-practice cases being instituted by the General Counsel.

X. CONCLUSION

As a native of Detroit, I am particularly anxious to maintain vigorous and impartial enforcement of the statute by myself and staff. I welcome and do not in any way resent constructive criticism. I realize that errors will be made and perfection is not claimed, but we have set our sights high and I am indeed surprised, as I am sure those in the area who have utilized the statute would be, to learn of the criticism leveled at this region by the testimony of a few witnesses before the House Committee on Education and Labor. Indeed, the fact that the office has been criticized in its case handling in such a small number of the many cases it has handled appears to me to be highly significant. Additionally, much of the criticism deals with matters of the application of clearly established statutory and the Board decided policies over which the region has no control. It must be recalled that in practically every charge case that is filed, the region is required to decide against one of the parties to the case, on matters on which feelings often run quite high. No one likes to have a case decided against him and when that occurs he is frequently not the most unbiased of critics. That so few have come forward to criticize the office, in my opinion, constitutes substantiation of our position that we have tried and succeeded in doing an honest and effective job of public service.

I have submitted specific statements in the short time allotted on the few instances of specific criticism involved. I stand ready to explain my conduct or that of my staff whenever called upon to do so.

HARRY N CASSELMAN,
Director, Seventh Region

MAY 4, 1953.

To: George J. Bott, General Counsel.

From: Howard F. LeBaron, director, 21st region

This memorandum is submitted at your request and will discuss generally the operations of the Los Angeles office. I have already given you a comprehensive written report in each case arising in this region as to which there was any testimony or statement before the House Committee on Education and Labor. For that reason, I shall not discuss any of the facts or issues in those cases. I am happy that the committee is giving us an opportunity to present our side of the story as to those cases because I am confident of the committee's reaction once it sees the facts in their true perspective.

One witness, Mr. Gould, made a broad charge that "when it has come to a question of deciding something that would assist an employer it has always been against the employer and when it has come to a situation where it would assist a union it has always been to the assistance of a union" (p 2760).

Of course, no one can be uniformly that bad, but, passing the obvious exaggeration, I should like to point to some statistics at the expense of being tiresome. Unfortunately, sometimes facts are not as interesting as lurid allegations.

Since the 1947 amended statute became effective, this office has received approximately 5,900 charges and petitions. It is significant that we have been criticized so far as our objectivity is concerned in only 2 cases before the committee; of course, if in fact we were biased in those 2 cases, that represents 2 cases too many. As to the facts in those cases, you are referred to our reports in the Capital Service and Richfield Oil cases.

From the period when the amended statute became operative through December 1952 we had received 1,578 CA cases. During the same period, we issued 269 complaints in CA cases (17 percent of the total), we obtained informal settlements in 252 cases (16 percent), and we dismissed during that period 449 cases (29 percent).

From the time that the statute became operative through March 1953 we received 638 CB, CC, and CD cases. We issued complaints in 103 cases arising under section 8 (b) of the statute (16 percent), obtained informal settlements in 75 cases (12 percent), and dismissed 208 cases (33 percent).

I do not suggest that these almost even percentages demonstrate even-handed justice, but I do know they completely dispose of Mr. Gould's allegation as quoted above.

You will note that the cases in which there has been criticism of this office are injunction cases arising under section 8 (b) (4) of the statute. There is at least a suggestion that this office has been dragging its feet in CC cases.

Without making any kind of selection or trying to choose cases which were to our advantage, we analyzed the last 25 CC cases filed which were fully investigated, including a report to the General Counsel. We found that the median days elapsed from filing to the date of our report to the General Counsel was 9 working days. It should be stressed that we do not seek an injunction unless the regional director has reasonable cause to believe there has been a violation of the law, whereas no such factual analysis is necessary where a State court grants an injunction. Certainly 9 working days represents an expeditious investigation of the allegations, interviewing of witnesses, obtaining of affidavits, getting the position of respondent, etc. As you know, unlike the typical CA cases, it is necessary to deal not with one employer and the incidents occurring at his plant and the facts as to his commerce, but with several employers and the incidents occurring at their plants and the data as to their businesses. I am sure you are aware of the fact that sometimes these indirectly involved employers are reluctant to supply information if for no other reason than that they just don't want to get involved in an unpleasant situation.

I should also like to point out with respect to injunction cases that we have not lost a single case in the district court. On the other hand, in several of our cases we have been successful in obtaining an injunction but the Board has later dismissed the case.

I am rather proud of the reputation this office has established in this community. If it were possible, I wish the committee's investigators could check with outstanding attorneys who handle the bulk of the labor relations business for employers in this area and the many employers, large and small, with whom we have dealt. I know they would get a different reaction than they did from one witness discussing one case.

As you know, I was regional director for the Board in Atlanta and then in New York City before I came to Los Angeles. Those offices are considered in the agency to be places where considerable ability and a great deal of tact are necessary. During my service, I never received any adverse publicity in the papers, and during the some 6 years that I have been in Los Angeles I have never been criticized by the press. I do not like to make comparisons, but I am forced to point out that this office had received considerable adverse comment in the newspapers before my arrival.

I am appreciative of the fact that the committee is primarily interested in the broader aspects of its functions and the very difficult problem of legislating in the field of labor relations. I, too, am interested in that very important aspect of the committee's responsibility. As an individual, however, I am also quite concerned about the fact that the committee hearings were used as a forum from which to attack me and my staff and to charge me with favoritism to unions. By no means do I propose to answer that unfounded charge by trying to demonstrate that I am biased against unions. That is not the case. I am doing my level best to enforce this law that Congress wrote honestly and efficiently.

In administering the act here in Los Angeles as to industries in southern California and Arizona, I have attempted, wherever possible, to persuade labor organizations to bring their operations into conformity with the law. Every man in the office has been impressed with the concept, and so far as I am aware, has adhered to the idea, that we are not interested in throwing our weight around as representatives of a Government agency and clubbing people with litigation at every turn. At the expense of sounding immodest, it is my sincere conviction that we have been particularly successful in the Los Angeles area along those lines.

As an example, this is the only area in the United States where the building-trades unions and building contractors, after much negotiation with this office, agreed to institute lawful hiring practices and to reinstate a number of employees with back pay where they had been illegally refused employment or discharged. As a result of these steps, the unions agreed to a Board order without litigation and to the entry of a consent decree in the Court of Appeals for the Ninth Circuit, which will assure good faith compliance with the arrangements entered into with us. This settlement covers all building-trades operations affecting interstate commerce in the 12 southern California counties involving some 3,000 contractors and an estimated 130,000 employees.

When it was brought to my attention that the International Longshoremen's Union and the Pacific Maritime Association were operating an illegal hiring hall on the waterfront and had discriminated against several men, we brought the parties together and were able to arrive at a settlement whereby the hiring

hall arrangement in the Los Angeles Harbor was completely revised. Non-union employees who were previously discriminated against not only were reimbursed with back pay amounting to \$10,000, but even more important were given an opportunity to work on the waterfront. The success of this agreement is borne out by the fact that since that time no further charges have been filed alleging that anyone in this industry has been discriminated against because of his nonunion membership. As a result, the turmoil which too frequently has existed in large ports has been absent in the Los Angeles Harbor.

Another explosive field was the growing garment industry in the Los Angeles area. Here, too, after charges were filed, our investigation revealed that the unions and the employers were illegally requiring union membership. Settlement agreements affecting approximately 5,000 employees were entered into with 3 employer associations, 100 individual companies, and the unions involved. As a part of the agreement reached with this office, some 3,000 employees received approximately \$20,000, representing wages, union dues, and initiation fees improperly withheld or paid. In addition, various facilities provided by the vacation, health, and welfare fund were opened up to all employees, union and nonunion alike. Finally elections were held to determine whether the employees wanted to be represented by the unions. Again the efficacy of the agreement is borne out by the fact that since that time we have not had any charges filed alleging that nonunion employees have been discriminated against in this industry.

In the very important motortruck industry, charges were filed against Motor Truck Association of Southern California and 4 of its affiliated companies and against the International Brotherhood of Teamsters and 13 of its locals. It is estimated that there are more than 400 members in the Motor Truck Association employing more than 15,000 people.

Again we obtained a settlement agreement, after negotiating with the parties, which resulted in reinstatement and back pay for certain employees. Of particular significance so far as broad enforcement of the statute is concerned, however, is the fact that the settlement, as a practical matter, brought about the deletion of illegal union security provisions from contracts covering 11 Western States.

These results, of course, are not obtained through accident. You and your Washington staff, I know, are aware of the fact that I give an unusual amount of direct, personal attention to cases and the personnel in the office. I personally review every case where a recommendation to dismiss or to issue a complaint is made. I make a point of investigating very carefully any complaint or inference that a member of this staff is out of line. While I certainly back my men up when I think they are in the right, it is equally true that I make myself readily available to anyone who wants to discuss a case or the personnel. You have personal knowledge of the fact that in those few instances where corrective measures have been necessary, they have been taken promptly and firmly.

I should like to point out that I was amazed when charges of favoritism were made before the committee because the witnesses, although they have frequent occasion to visit the office and know that I am at all times available, had never complained to me that there was any misconduct or favoritism.

I should like to refer to the fact that during the time that Mr. Denham was General Counsel, I regularly received a service rating of excellent. Those ratings were personally reviewed and signed by the General Counsel. Certainly if I were biased against employers, Mr. Denham would have been aware of that fact. It is impossible for a regional director to get a rating of excellent unless he is graded outstanding with respect to objectivity. Uniformly I was rated outstanding in that respect.

This is the first time in my 11 years of service as a regional director that I have been called upon to answer a charge of bias or to defend myself against innuendo or accusations, however loose. I am most appreciative of the fact that the committee, out of the fairness which we have come to look upon as basic to our American system, has given us the opportunity to give an account of our stewardship and to present the other side of the picture.

MAY 4, 1953.

To: George J. Bott, General Counsel.
From: Thomas J. Graham, Jr., Director, region 19.
Subject: Operation of the 19th region

PERSONNEL OF NATIONAL LABOR RELATIONS BOARD, 19TH REGIONAL OFFICE, AND
PORTLAND, OREG., SUBREGIONAL OFFICE

The professional personnel of the National Labor Relations Board, 19th regional office, and Portland, Oreg., subregional office were recruited and inducted into the Federal service in accordance with the rigid professional standards uniformly required by the United States Civil Service Commission. This is true both in respect to those persons who are qualified attorneys and also in respect to administrative personnel and field examiners who were selected on the basis of educational qualifications and experience qualifications for their jobs.

So far as field examiners are concerned, those who entered the Federal service prior to 1947, the date that the first civil-service examination was given for field examiners, were uniformly required to take the examination and secure a qualifying grade in the civil-service examination as a condition of continued employment. All field examiners hired since that date must have secured qualifying grades by taking the civil-service examination and they were employed from the civil-service register.

Regional director

Thomas P. Graham, Jr., age 53

Received public-school education in the public schools of the States of Idaho and Washington.

Graduate of Whitman College, Walla Walla, Wash., with a Bachelor of Arts degree in political science.

High-school instructor in civics government, sociology, and economics, Portland, Oreg., high schools, 1924 to 1932

Graduate of Northwestern College of Law, Portland, Oreg. Bachelor of Law degree in 1932 and admitted to the Oregon bar.

Was engaged in private practice of law in Portland, Oreg., from 1932 to 1937.

In 1936 was elected to the Oregon State Senate. For 2 years member of and chairman of Oregon State Welfare Commission (now known as Oregon Wage and Hour Commission).

Positions with the National Labor Relations Board: Field examiner June 16, 1937, to September 21, 1937; field attorney September 22, 1937, to December 31, 1938; regional attorney January 1, 1939, to April 10, 1941; regional director April 11, 1941, to the present.

World War I veteran, United States Army 2 years, 18 months of which was served overseas in France

Chief law officer

Patrick H. Walker, age 46

Educated in the public schools of Spokane, Wash.

Graduated with Bachelor of Arts and Bachelor of Laws degrees from University of Idaho

Engaged in the general practice of law in the States of Washington and Idaho from 1931 to 1937.

Served as deputy prosecuting attorney in Boundary County, Idaho, and served one term as prosecuting attorney in the same county.

Positions with the National Labor Relations Board: Field attorney September 1937 to March 16, 1942, at which time he entered the United States Army. After terminating military service, he resumed as a field attorney until appointment as chief law officer on April 18, 1948; chief law officer from 1948 to present.

He is a veteran of World War II, and served from March 1942 until September 1946. He attained the high rank of major, and served overseas for over 10 months in Japan and Korea. In Korea, drafted all the labor laws for the occupation forces.

Officer in charge, Portland subregional office

Robert J. Wiener, age 45.

Graduated from Lawrenceville Preparatory School Lawrenceville, N. J., 1926

Received bachelor of arts degree from Yale College, New Haven, Conn., 1930.

Received master of arts degree in social economy (public administration) from American University, Washington, D. C., 1937

Employed October 1930 to February 1932 as salesman and section head, B. Altman & Co., New York City department store.

Employed as agent by Universal Producing Co., Fairfield, Iowa, from 1933 to August 1934.

From August 1934 to September 1936 employed as an investigator by the old National Labor Relations Board, a predecessor organization to this agency.

Positions held with National Labor Relations Board: Regional director, Minneapolis Regional Office, May 1937 to April 1941; senior field examiner, Detroit Regional Office, April 1941 to October 1947; examiner in charge (title changed to officer in charge in 1945), Portland Subregional Office, October 1947 to the present time

Chief labor management relations examiner (chief field examiner)

Kenneth McClaskey; born in Albion, Wash., June 5, 1910. educated in the public schools of Pullman, Wash.; graduated from the State College of Washington, Pullman, Wash., in 1933, bachelor of arts degree; held a teaching fellowship at the State College of Washington in the English department, 1933-34; was awarded a Rhodes scholarship at Oxford University, England, in 1934; received a bachelor of arts honors degree in economics, political science, and philosophy at Oxford University in 1936; received a diploma in public administration at Oxford University in 1937; completed all courses for a master of arts degree at Oxford University.

Positions with the National Labor Relations Board: Field examiner Seattle regional office, September 13, 1937, to September 1, 1941; senior field examiner, September 1, 1941, to July 20, 1943; senior field examiner October 17, 1945 to April 7, 1952; chief, labor-management relations examiner April 7, 1952, to the present

A veteran of World War II Entered the United States Army as an enlisted man on July 20, 1943, and released from the service on October 15, 1945. Highest rank attained, second lieutenant Served overseas for 1 year in Trinidad, British West Indies.

Field examiners:

Seattle office:

*Date employed
by Board*

Kenneth McClaskey	Sept. 13, 1937.
Orville W. Turnbaugh	June 14, 1948
Julius Draznin	August 1944.
Donald D. McFeely	Dec. 16, 1947
Howard E. Hilbun	Jan. 12, 1948.
William G. Nowell	May 5, 1941
Oliver E. Kearns	Sept. 20, 1948
Eugene R. Ormsbee	Mar. 4, 1946
Albert L. Gese	Aug. 23, 1948
Miss Rachel Storer	September 1944

Portland office:

Elwood G. Strumpf	Feb. 2, 1948.
Arthur J. Hedges	August 1947
Rodney B. Tunks	Mar. 22, 1948.

Attorneys:

Melton Boyd	June 2, 1941.
Howard A. McIntyre, Jr.	Dec. 15, 1947.
Alan A. Bruckner	1947.
Robert E. Tillman	Dec. 26, 1941
A. C. Roll	1939
Paul E. Weil	June 1951

All of the professional staff members employed in the Seattle regional office and in the Portland subregional office are highly qualified in terms of education and experience background, to occupy the important labor management positions in which they serve. This conclusion is borne out by the fact, for instance, that of 22 professional employees in these 2 offices, all but 3 of the staff members are graduates of accredited colleges or universities and most if not all of this number have had specialized training in academic fields which prepare them for government administrative and legal positions in the field of labor relations. The three staff members not possessing degrees have all been enrolled for at least a year or two in colleges or universities and in addition have received other types of specialized technical or academic training which qualifies them for the position they hold, and is so recognized by the United States Civil Service Commission

Additionally, many of those holding degrees also hold advanced degrees in qualifying fields

Many of the staff members have had additionally valuable experience outside of the National Labor Relations Board, in private employment, in law practice, and with other Federal or State agencies, which contributes to their ability and value as civil servants. Those coming directly to the Board from colleges or universities were specially trained in the highly specialized field of labor-management relations, public administration, or political science and economics.

Of the 22 professional staff members, 13 were either born in the Pacific Northwest or else secured their entire education in the public schools and universities of the Pacific Northwest. This important fact, of course, means that more than a majority of the staff members are thus conversant with the economic, industrial and social conditions in the area in which they work. Their homes are in the Pacific Northwest. They are making their permanent careers in the Pacific Northwest and hence, are interested in the orderly and constructive development of the area in which they work. This fact also means that it is easier for them to secure the confidence and the cooperation of business, industrial, and labor groups with whom they work.

Also, over half of the male professional staff members served in the Armed Forces of the United States in either World War I or World War II. Three of the staff members are veterans of World War I and nine are veterans of World War II.

Over the years, the turnover among the professional members of the staff in this region has been, I presume, the normal turnover in Government agencies. The people who have resigned have done so because they have been offered more lucrative positions in private industry or in private law practice. Most of the members of the professional staff that have remained with the agency have also received offers which would pay them much more than their Government salaries, but have preferred to remain with the agency, having decided to make governmental service a career.

GEOGRAPHICAL PROBLEMS

The nineteenth regional office administers the Labor-Management Relations Act of 1947 for the largest geographical area or administrative division in the country. When it is considered that the Seattle regional office investigates and processes to a conclusion all representation cases and unfair labor-practice cases originating in the States of Washington, Idaho, and Montana, and the Territory of Alaska, and that the Portland subregional office similarly handles all cases originating in the State of Oregon, the enormity of the problems confronting the regional director become apparent.

Translating the geographical problem into personnel terms, this means that the staff of 10 field examiners attached to the Seattle regional office, for instance, must travel anywhere within this vast area where cases occur in order to make the original investigation of the cases, to conduct representation hearings and also to conduct representation elections whenever necessary. Then the six field attorneys attached to the Seattle regional office must proceed all over the above-described area and, in addition, into Oregon for the preparation for hearing and for the trial of unfair labor-practice cases.

Geographically, the area served by the Seattle regional office must be broken down or be considered as being several subareas. The so-called Puget Sound industrial area consists of that part of western Washington west of the Cascade Mountains and extending from the Canadian border 300 miles south to the Columbia River which divides the State of Washington from the State of Oregon. In this area, three-quarters of the population of the State is concentrated and considerably more than 50 percent of the State's industrial capacity. Most of the State's industrial manufacturing is concentrated here, including the State's large Douglas fir lumber industry.

The central Washington area extends east from the Cascade Mountains to the wheat producing areas of the Spokane and inland empire area. In this subarea are located many vegetable and fruit processing plants and canneries, and in the southern part the atomic energy project of the Hanford Engineering Works is located.

The geographical area of which Spokane, Wash., is the hub and known as the inland empire consists of much of eastern and southeastern Washington and the panhandle of Idaho. In this area is concentrated considerable light metals

manufacturing and fabrication, while the largest mining area in the region, that of the Idaho Coeur d'Alene mining region, is located there.

The State of Montana is another definite geographical subarea wherein are concentrated an important pine lumber industry and much mining and oil production.

Yet another geographical subarea is that of southern Idaho. In southern Idaho there is concentrated many dairy products, processing plants, canneries, and other agricultural and horticultural processing plants. The Arco atomic energy project in southeastern Idaho has mushroomed recently, causing a great increase in construction work and general industrial activity in that area. Many large new phosphate plants and chemical plants have been built in that area.

Finally, the Territory of Alaska, with its large fishing industry, mining industry, and Federal defense projects has become increasingly important.

The larger part of the population of the State of Oregon is concentrated west of the Cascades in western Oregon. Most of Oregon's industrial production is concentrated in the Portland, Oreg., and Vancouver, Wash., areas, except for the important lumber manufacturing industry which presently is concentrated in the Willamette Valley area.

Presently and for some time past, the distribution of representation and unfair labor practice cases in terms of origin has been almost equal as between the Puget Sound industrial or geographic area, the inland empire area, the Montana area, and the southern Idaho area. More seasonally than is true with the above areas, there are usually a considerable number of cases filed from points throughout the Territory of Alaska between January and September or October of each year.

This means that 1, and very occasionally 2, field examiners must make extensive and frequent field trips into all of these major subareas from the Seattle regional office. When a field examiner to whom southern Idaho cases are assigned goes into that area, he must make a trip varying from 600 to 900 miles distance from the office and frequently while in the area must travel 250 or 300 miles within that area while there. Whenever possible, field examiners utilize commercial air transportation, but because many cases originate in cities or communities not served by air transportation, it is often necessary that they travel by automobile to adequately and expeditiously serve management and labor in the area.

One or more field examiners are required to make trips to Montana with considerable frequency. There, unless the cases being investigated on that trip are concentrated in the major cities with air transportation connections, it is necessary that they travel by automobile or if that is not possible, utilize rail transportation. The difficulty with rail transportation in Montana is that while three transcontinental railroads serve Montana, their routes parallel one another across the State with relatively few connecting points and with bad rail connections. A trip into western Montana necessitates a trip of at least 500 miles in length and, if cases originate in central or eastern Montana, field examiners may be required to travel at least 1,000 miles.

Because the steamship transportation to Alaska is so slow and irregular, virtually all travel from the regional office to points in Alaska is accomplished by commercial air transportation. Presently, the major concentration of NLRB cases is in the Anchorage and Fairbanks areas. Anchorage is approximately 1,200 miles airline from Seattle, and Fairbanks is approximately 1,500 miles. The nearest city in Alaska is Ketchikan, over 800 miles from Seattle. More frequently than not, field examiners making the Alaska route or trip must make commercial airline connections hitting as a typical trip Ketchikan, Juneau, Anchorage, Fairbanks, and then back to Anchorage, and with possible stops in Valdez and Ketchikan.

The various industrial relation and labor relation problems and situations occurring or being encountered in these various areas differ greatly. Field examiners are normally assigned to cases originating in one of these major subareas for a period of 3 to 6 months and sometimes more so that they may become well acquainted with the management and labor personnel in that area and the peculiar problems existing there. An effort is made to shift their assignments so that they gradually become acquainted with the problems of the entire area and so that other staff members with perhaps different approach may serve different areas.

The regional geographic problem which has been described above complicates and makes more difficult than in any other regions, the expeditious and, at the same time, economic administration of the act and case handling generally.

Often, when the cases of one of these subareas are disposed of and a new case is filed, that is not considered economically justifiable to immediately send a field examiner out to investigate the case assuming that a field examiner were immediately available which is not often true. Rather, unless the case is a priority one, a field examiner will not be instructed to make a field trip into one of these farflung areas until there are several cases which he can handle on one trip.

CONTROL OF PERSONNEL

The overall control and supervision of regional office and subregional office professional personnel is accomplished in accordance with established civil service and National Labor Relations Board personnel regulations and policies. Subject to those personnel regulations and policies, the regional director of the 19th regional office is charged with the direct control and supervision of staff personnel. However, because his responsibilities and duties are numerous to an extreme and because of the fact that personnel control, which must be exercised over a staff of 20 professionals working in the largest geographical area administered by the Board, confronts him with peculiar and unusual difficulties, he delegates the supervision of regional office field examiners to the chief field examiner, the supervision of the regional field attorneys to the chief law officer, and the supervision of the field examiners in the Portland subregional office to the officer in charge of that subregional office.

These officials are directly responsible to the regional director for the work done by the staff members working under them and for results attained. They transmit directly to staff members orders, requests, and policies determined by the director. It is, however, not implied or meant that the regional director himself does not have close contact himself with all regional office personnel. Rather, the office atmosphere and regime is that of an informal closely knit organization in which staff members frequently take case problems and any problems concerning the administration of the act directly to the regional director when necessary.

When new or inexperienced field examiners are assigned to the regional office, they undergo an intensive and closely supervised in-training program. Such in-training programs are carried out under the direct supervision of the chief field examiner in the regional office and under the officer in charge at the Portland office. New lawyers are likewise supervised closely in their in-training program by the chief law officer. These officials and other experienced employees direct new employees to a proper and intensive course of reading in respect to the statute, of the Board's rules and regulations, the field manual, and board policy as incorporated in the Board's decision and in court decisions.

These employees are then taken on field trips so that they can observe at first hand the investigational techniques, the adjustment or settlement techniques or techniques for preparation for trial and the trial of cases. Their work is carefully observed and checked for correctness of approach, proper techniques, and proper results. When the regional director and their particular supervisor concludes that they are ready to handle cases on their own, cases are assigned to them, but there is a continuing check and close supervision.

In this office the chief field examiner assigns all cases to field examiners and originally to attorneys. The joint assignment system will be discussed below in more detail. The cases are assigned for investigation and handling with care taken that they are being assigned to the staff member whose particular experience and skills and techniques will result in the best possible job being done in the shortest time. Cases are assigned to field examiners in such a way that most or all cases originating in a particular area are assigned to the same field examiner. This is done to prevent duplication in travel, and so that economic and efficient case handling will result.

Thereafter, the chief field examiner checks frequently with field examiners as to the progress, status, and expeditious handling of the cases assigned to them. Field examiners frequently consult with the chief field examiner concerning their case problems. When it appears that a field trip is necessary, a field examiner consults with the chief field examiner concerning his schedule and itinerary for the trip. When his trip and schedule is approved, the field examiner submits a detailed itinerary which lists the points to be visited, the days and hours in which he plans to be in the particular cities listed, places where he can be reached by telephone at all or most hours of the day, and a list of the cases he will be working on with an indication as to whether he is investigating the cases, conducting hearings in respect to them, or conducting representation elections.

Thereafter, the field examiner is in telephonic communication frequently with the office. When new cases are filed or there are new developments in a case which the regional office becomes aware of, the chief field examiner may call him and does frequently.

All reports recommending action or disposition of cases prepared by the field examiner as a result of his investigation of a case are reviewed by the chief field examiner who approves or questions the recommended action, and then his reports with the chief field examiner's observations or comments are reviewed by the regional director, and frequently by the chief law officer. The field examiner is directly responsible to, and clears all actions or recommendations in respect to disposition of representation cases with, the chief field examiner or the officer in charge at the Portland subregional office. There is a further review by the regional director.

Similarly, the Chief Law Officer maintains close direct supervision over the work of all field attorneys in the office. He assigns them cases for hearing or for legal review. He closely checks and reviews their memos and recommendations. In the issuance of complaints, field attorneys must clear their legal theories with the Chief Law Officer and must clear their trial briefs and other legal documents which they prepare. The Chief Law Officer schedules the work of the attorneys, reviews their hearing records and all work which they do on compliance or on other legal matters.

Clearance for the issuance of notice of hearing in representation cases must be secured by field examiners from the Chief Field Examiner and the regional director.

When unfair labor practice cases are assigned in the regional office, joint assignment is made simultaneously to the field examiner and to a field attorney. Thereafter, during the course of the investigation, the field examiner consults closely with the field attorney. In most cases he will be the attorney who will try the case. Much time is saved by this continuing consultation and the field examiner's job is lessened because the attorney is advising him continuously in respect to Board case law and policy and as to possible legal theories or difficulties. Normally, when the field examiner's investigation of the case is complete, the legal review of the case and the case file is likewise complete or is completed shortly thereafter.

The field examiner or the attorney assigned to the case, unless the charging party wishes to withdraw the charge, prepares a brief report delineating the legal issues and questions involved and their recommendations as to disposition of the case. These reports are submitted to the regional director, the Chief Law Officer, and the Chief Field Examiner.

Unfair labor practice cases which have not been disposed of by withdrawal by the charging party are then reported orally to an agenda meeting by the field examiner and the field attorney assigned to the particular case. Participating in the agenda meetings, at which decisions concerning the disposition of the case are made, are the regional director, the Chief Law Officer, and the Chief Field Examiner. The facts concerning the case, the legal theories of the case, governing Board and court decisions pertaining to the issues involved, are discussed at length in these agenda meetings, and final decisions as to further action on the case is made by the regional director and the Chief Law Officer. Detailed minutes of the agenda meeting are then prepared setting forth the decision reached, the legal theories and reasons supporting the action taken, and in respect to any other pertinent matters or considerations. Thus the field examiner and the field attorney, responsible for the investigation and recommendations in respect to disposition of a case, do not themselves determine what action will be taken in respect to it. Instead, they make recommendations only but are allowed to participate in an effective way in the ultimate decision-making process. Thus, although the regional director, and to a lesser extent the Chief Law Officer, have the ultimate decision-making power, they are by this process able to avail themselves of the advice and assistance and recommendations of the persons most intimately acquainted with the facts of each particular case.

When criticisms are received from parties or the public regarding the conduct of Board agents whether that criticism be for case handling or other subject matters, if the criticisms involve an attorney, the matter is handled jointly by the Chief Law Officer and the regional director. The attorney in question is required to submit a full report to the Chief Law Officer and the director, and they in turn make an independent investigation of the matter, and if they conclude that the criticism was justified, they take corrective steps. If the criticism involves a field examiner, the matter is handled directly by the regional

director who interviews the Board agent involved and informs him of the nature of the criticisms and requires a report regarding the matter. After this is received, the director makes an independent investigation, and if he finds the criticisms were meritorious, he takes steps to correct the matter.

SPECIFIC INDUSTRIAL PROBLEMS

We will not turn to a consideration of highlights of achievements obtained by this office. Necessarily time permits consideration only of a few factors and a few cases.

Hanford atomic-energy project

An example is a delineation of the stability of labor relations achieved in the construction of and operation of the Atomic Energy Commission's facilities at Richland, Wash. The prime contractor, General Electric, was vested with operation of the Hanford project and supervision over subcontractors. In 1947 General Electric Co. took up the responsibility of undertaking the operation of the Hanford project. The Hanford project is an extensive area in which certain materials are produced. Shortly after assuming its duties, General Electric became subject to various claims of representation by various labor organizations. The organizations represented substantial numbers of its employees. In order to avoid disruption of the company's operations it was necessary to quickly and effectively dispel any unrest among its employees. Achieving that end, consent elections were arranged and conducted. The ready cooperation of the employer and unions with the personnel of this office is commendable. The first election involved all the production and maintenance employees and was conducted pursuant to a consent-election agreement obtained by the Board agents.¹ Other elections involved the firemen,² the powerhouse workers,³ and health instrument division employees.⁴

Following those achievements, next the company was presented with organizing claims among its security guards,⁵ and nurses.⁶ A full hearing was held on the issues of the extent of the collective-bargaining units sought to be established by the petitions filed in these cases. A decision of the Board directed elections be conducted among such employees. Hence again by affording employees an opportunity to exercise their choice through means of secret ballot, continued and efficient operation of the project was assured.

Shortly after General Electric assumed its duties at the Hanford project an expansion of facilities was embarked upon. The problem of undertaking the work was lodged in the joint venture of Guy F. Atkinson Co. and J. A. Jones Construction Co., for brevity herein called A.J. The problem of manning the undertaking absorbed the energies of A.J. until early 1948 when disputes between unions over work assignments began to come to the surface. Through ready cooperation of representatives of the employer, the unions and this office, work stoppages were resolved by means of claims of representation.

The first such dispute involved members of the crafts of millwrights, machinists, operating engineers, and carpenters.⁷ The conflicting claims of the craft unions were resolved through the Board ordering a representation election.

Thus by permitting the employees through the democratic process of an election their turmoil was quieted when they selected their own collective-bargaining representative.

The successful manner in which disruption of operation of the project was dispelled was the keystone to succeeding like efforts. Shortly thereafter, other groups of employees sought like disposition of their problems. Members of other crafts employed on the project were kept at work while their problems were expeditiously and satisfactorily concluded by means of other elections. Other craftsmen involved therein were office employees,⁸ engineers and draftsmen,⁹ and truckdrivers and warehousemen.¹⁰

Since the foregoing demonstrations of prompt attention to duty by the personnel of this office, the employers and the unions have not had occasion to seek

¹ *General Electric Company* (19-RC-208, decided February 24, 1949).

² 19-RC-459, decided March 13, 1950.

³ 19-RC-699, decided March 7, 1951.

⁴ 19-RC-860, decided September 27, 1951.

⁵ *General Electric Company* (85 N. L. R. B. 1316).

⁶ *General Electric Company* (89 N. L. R. B. 1247).

⁷ *Atkinson-Jones* (84 N. L. R. B. 88).

⁸ *Newberry Neon and Electric Co.* (19-RC-248, decided May 19, 1949), and *Urban-Smythe and Warren* (19-RC-249, decided May 19, 1949).

⁹ *Atkinson-Jones* (83 N. L. R. B. 1004).

¹⁰ *Atkinson-Jones* (19-RC-849, decided July 10, 1949).

resolution of their differences through this office. The pattern for avoiding recurrences as delineated above thus was early established. This project of such vital national magnitude has never been affected by a serious or extended work stoppage. Such was achieved by reason of prompt, efficient, and equitable administration of the act by personnel of this office. Stability of labor relations has resulted at the Hanford project.

The fishing industry

From the port of Seattle thousands of fishing vessels ply the seas in search for shrimp, crab, bottom fish, herring, halibut, and salmon, among some of the various consumed seafoods.

Tens of thousands of residents of Oregon, Washington, and Alaska are engaged in the fishing trade. Processing of the ensnared seafood entails employment of tens of thousands more residents of Alaska and the Pacific Northwest.

Employees engaged in fishing for many years past have been represented by a myriad of unions.¹¹ Influence of the fishermen soon was felt among employees engaged shoreside in processing the catch. Since the canning of salmon required more personnel than other types of processing, cannery operators soon became the dominant employers of both fishermen and shore employees. Approximately 15,000 annually are employed in the industry, and about 7,000 are employed as cannery workers. The bulk of the salmon-canning industry is conducted in Alaska. The annual pack is valued in excess of \$90 million. Approximately 80 companies operate 96 canneries, the locations of which spread from Hyder and Metlakatla in the southwest, to the mouth of the Kuskokwin River. The distance between the two extremes stretches over 2,200 miles.

The industry employs Filipinos to work in the canneries, supplemented wherever there is an available source of manpower, by employment of natives of Alaska. The Filipinos are recruited from among migratory laborers in the States of Washington, Oregon, and Alaska.

The first attempt to organize the employees began in 1932 by the AFL. Until 1937, however, the canneries employed on an individual contract basis. In the latter year both the AFL and CIO began contesting for representation of the Filipinos. Rivalry was rife even to the point of volatile disruption at the time of embarking on the packing season.

Salmon canning is an operation of a highly seasonal nature. The fish must be caught only during that period when nature directs the biological urge of the salmon. This office apprehended the disaster likely to befall such an important segment of the Nation's economy if labor strife were allowed to go unchecked. Through the alertness of the personnel of this office the employers and unions were persuaded to resolve rivalries through means of a representation election. The election was held in April 1938, and thus the canneries were enabled peaceably to pursue their endeavors.

From that time through the ensuing years each succeeding outburst of union rivalry has been quelled before disastrous stoppages betell the industry. The incipient stoppages have been blocked because this office instantaneously has made available to the parties those services provided by the act.

In 1939 the cannery owners banded together into an association, for purposes of collective bargaining with the unions. However, the association almost annually has been confronted with some kind of a claim from some union.

The types of employees involved have been resident cannery workers, non-resident cannery workers, seine and gill net fishermen, radio operators, and driftnet fishermen.¹²

Contentions between the AFL unions and their rival unions reached intensity when Food, Tobacco, Agricultural, and Allied Workers were expelled from the CIO. At that time the association recognized the expelled union in the face of a claim of recognition advanced by both the AFL and the United Packinghouse Workers. Again, however, strife and strike were averted when this office persuaded all parties of their errors.

The parties entered into a consent to a decree of the court of appeals.¹³ At

¹¹ Alaska Fishermen's Union, Deep Sea Fishermen's Union, Otter Trawler Union, Bering Sea Fishermen's Union, Purse Seiners Union, Rift Netters Union, United Fishermen of Alaska, Alaska Native Brotherhood, Seafood Workers Union, Alaska Marine Union.

¹² *Alaska Salmon Industry, Inc.* (33 N. L. R. B. 727; 61 N. L. R. B. 1508; 78 N. L. R. B. 135; 78 N. L. R. B. 522; 81 N. L. R. B. 1335; 82 N. L. R. B. 1056; 82 N. L. R. B. 1395; 83 N. L. R. B. 656; 90 N. L. R. B. —).

¹³ *NLRB v. Alaska Salmon Industry, Inc.* (C. A. 9, No. 12608, enforcing 19-CA-301, decided June 8, 1950)

this same time the expelled union was welcomed under the wing of the International Longshoremen's and Warehousemen's Union. The latter joined in the fray in support of FTAAWU by refusing to load cargo on vessels of Alaska Steamship Co destined for the Alaska canneries of the association members. This action of ILWU came at the crucial point of preparation for canning. This office promptly sought and obtained from the United States district court an injunction against ILWU and its newly embraced cannery workers' union. By reason of celerity of action the office again prevented interference with normal canning operations.

Since those last outbursts in May 1950 were successfully dispelled through the effort of personnel of this office, no further labor turmoil has beset employers engaged in canning salmon. Operations in this industry are dependent on functions of Nature and for this reason it is highly competitive and of extremely seasonal character. With those factors well in mind, through the years the personnel in this office has been able to afford to the employers an opportunity to establish uniformity in labor relations

Idaho mining

This office also serves the people of the State of Idaho. Much of the romance and lore of Idaho centers around the mining industry. In 1884 the Coeur d'Alene country was the scene of one of the wildest stampedes in the history of mining and it is still the most important mining area in the State. The Coeur d'Alenes produce lead, zinc, silver, gold, and copper. Approximately 90 percent of the State's mineral production comes from this area. When, in 1937, unions began to organize the miners, the residents could well remember the year of 1899 when open warfare broke out between the Western Federation of Miners and the mineowners. The personnel of this office, too, had intimate knowledge of the past dark history of the Coeur d'Alenes. So a repetition was avoided when the parties were afforded an opportunity to "get off their chests" their respective repressions, fears, and anger through a Board-ordered hearing.¹⁴ By providing a means for peaceful disposition of differences again a pattern was established by this office. From that landmark in labor relations in the Coeur d'Alenes there followed, through the years, adherence by employers and unions to the established pattern. Uniformly the parties have resorted to the processes of the act by calling upon the personnel of this office to resolve their differences. Each one of the dominant mine companies and the unions repeatedly have made their problems a matter of case law.¹⁵ As a result there have been no major or protracted work stoppages in this specialized industrial area.

The advent of stable labor relations achieved through this office has had a pronounced effect upon continued uninterrupted production of nonferrous minerals so vital to the national economy

West coast shipping

Within this region the ports of Seattle, Grays Harbor, Longview, and Portland serve as a gateway for shipping to the Orient, Alaska, and South America. The waterfront of the ports, for years, had been plagued with labor unrest, indeed, even sporadic violence. Shipowners utilizing the facilities of the ports, perforce, had to deal with a multitude of unions.¹⁶ One of the earliest sources of contention between unions and maritime employers was the issue of hiring halls. In 1947 the maritime unions balked at the application of the terms of the Taft-Hartley Act to their modes of function. A serious strike protracted from September to December 1947, devastating maritime commerce from the ports of the Pacific coast. The strike ended when contracts were concluded between the unions and the maritime employers. The contracts preserved the traditional mode of hiring from the unions' hiring halls. Preference in employment was to be accorded only to members of the unions. One of the unions is National Union of Marine, Cooks and Stewards. This union exercised jurisdiction over persons employed in the stewards department of vessels. It had membership

¹⁴ *Sunshine Mining Company* (T N L R B 1252, enforced, 110 F 2d 780)

¹⁵ *Coeur d'Alene Mining Company, et al* (77 N L R B 570, 696, 740), *Bunker Hill and Sullivan Mining and Concentrating Company* (89 N L R B 243), *Sullivan Mining Company* (101 N L R B 201)

¹⁶ International Longshoremen's and Warehousemen's Union, Pacific Coast Marine Firemen's Union, National Union of Marine Cooks and Stewards, Master Mates and Pilots' Association, Marine Engineers' Beneficial Association, American Radio Association, International Longshoremen's Association, National Maritime Union, and Sailors' Union of the Pacific

in and operated hiring halls in all major Pacific coast ports, the Gulf ports, and some eastern seaboard ports. The terms of the contract applied not just to Pacific coast ports but to any port where the union carried on its affairs. Obviously, the provisions of the contract flouted the letter and spirit of the Taft-Hartley Act.

During the strike a group of members of NUMCS rebelled against the leadership of the union. The rebellion sprung from disgust over the tendency of the leadership to exhibit adherence to communistic tactics and policies. They formed a union of their own. In retaliation the leadership expelled them from membership in NUMCS. When the strike ended, fortified by the terms of their contract, the union embarked on a program discriminating against this group with a vengeance. None of them could resume their traditional employment in maritime trades. The group brought their dilemma to this office. With full awareness of the flagrant violation of the act, this office proceeded to attack the union's contract, its hiring hall, and its continued patent discrimination. Also, we had an acute realization that the welfare of the maritime industry of the Nation as a whole was inextricably bound into the terms of the contract. After a full hearing on the complaint issued by this office, the Board issued its order. The union was stripped of its right of recognition, the contract was declared void, continued discrimination was prohibited and the individuals were to be reimbursed for their loss of employment.

The seriousness of the breach of law was more fully brought home to the unions and the maritime employers after personnel of this office conferred with each. By then this Nation was engaged in its titanic struggle with communism in Korea. All military efforts were dependent upon uninterrupted movement of ships from the Pacific Coast. The Nation could ill afford any more waterfront troubles attributable to stewards department employees.

With those factors well in mind this office set out to remove the stewards department as a cause of labor strife. We were able to convince all parties that peace on the waterfront and uninterrupted shipping from the ports could be obtained only by elimination of the discriminatory hiring hall. The parties consented to entry of a decree of the court of appeals confirming the Board order.¹⁷ The decree also provided for establishment of a hiring hall not operated by the union but operated under the auspices of an officer of the court of appeals. Thus the union further was stripped of its power to control the source of manpower sought by employers. So also the union was deprived of its power to cause job seekers to be channeled only through its discriminatorily operated hiring hall. Job opportunities were open to all applicants, NUMCS members and A. F. of L. members. But most important of all, any individual who chose to refrain from membership in any union now could seek maritime employment without fear of discrimination, retaliation or restraint of any kind. Since the date the Board upheld the allegations of the complaint issued by this office, vessels sailing from Pacific coast ports have not been affected by strikes or disputes stemming from steward department employees. This office succeeded in clearing up that one most troublesome source of labor unrest for the benefit of all maritime employers. So again this office achieved establishment of stability in labor relations among maritime employers and the maritime unions. No further extended strikes have plagued the Pacific coast maritime industry.

The outstanding achievement of the National Labor Relations Board respecting the northwest lumber industry

The National Labor Relations Board and its 19th regional office has accomplished an outstanding achievement in making possible the stabilization of labor relations in the Pacific Northwest lumber industry.

Lumber is by far the largest and most important industry in the Pacific Northwest. It consists of several thousand individual employers, employing more workmen than any other industry. There are over 4,000 employers in the area employing far in excess of 150,000 workmen. The payroll for Washington alone for the year ending September 30, 1952, in this industry exceeded 166 millions of dollars. The welfare and prosperity of the Northwest is dependent upon the production of lumber and lumber products, which in turn is dependent upon harmonious management labor relations.

Prior to enactment of the National Labor Relations Act, the lumber industry was plagued with strife to the detriment of the Nation's economy and to man-

¹⁷ *N. L. R. B. v. Pacific Maritime Association* (C. A. 9, No. 13386, enforcing 98 N. L. R. B. 582)

agement and labor alike. In the 16 years since the act's constitutionality was affirmed, the industry has broken all records for board-foot and dollar-volume production, employment is at history's highest, and industry has now attained its all-time maximum in collective bargaining and peaceful labor relations. A brief history of this industrial conflict since the turn of the century makes clear the major role played by the National Labor Relations Board in bringing about the present desirable result.

Many factors contributed toward the catastrophic conditions in the Northwest lumber area, which provided a fertile field for the revolutionary IWW (Industrial Workers of the World) labor organization. With the advent of World War I it was necessary for the Government to send soldiers to work in the industry. The War Department in 1917 sponsored an organization known as the 4L (Loyal Legion of Loggers and Lumbermen) to insure labor peace and obtain necessary production for war-time needs. Government support was withdrawn at the close of hostilities. The 4L, an employer-sponsored union, was independently reorganized and incorporated in 1919. Its two rivals, the IWA and A. F. of L., were in constant conflict with the industry and the 4L. Open warfare accompanied by property destruction and bloodshed were common. Crisis was reached in 1935, the year of the act's passage, when the industry suffered the worst strike in its history. The number of workmen involved were 26 percent over the 1935-39 average, and the total man-days idle was 50 percent above the average. Throughout this period, the lumber industry accounted for 26 percent of all strikers in the Pacific Northwest, 41 percent of the workmen involved, and 49 percent of the man-days idle.

It is significant to note that 39 percent of all Pacific Northwest strikes during the period 1934 to 1937, 55 percent the total number of strikers involved, and 80 percent of all man-days lost were caused by unions to gain the right to organize, recognition of the union by the employer, and union control of hiring. The National Labor Relations Act, as amended, was designed to dispose of all of these issues without resort to economic force. Significantly, strikes for these reasons are virtually nonexistent today due to the effective administration of the act. This was accomplished by a thorough study and understanding of the problems of the industry and diligent efforts of this region's staff to achieve labor peace through enforcement of the act.

Year 1947 proved to be the crucial year for the Board in the Pacific Northwest lumber industry. The constitutionality of the act was upheld by the United States Supreme Court. Dissension within the A. F. of L. lumber union resulted in a split in that year, and the CIO lumber union came into being. The A. F. of L. and CIO unions launched separate organizational drives in the industry, joined in a war on the 4L, and at the same time engaged in jurisdictional conflict with each other. The industry and the Board were caught in the middle of these forces.

The A. F. of L. and CIO unions filed charges with the Board alleging that the 4L was illegal under the act. In the same year, 1947, the 4L recognizing that it could not have legal status as a labor organization under the act dissolved and a successor, IEU (Industrial Employees Union, Inc.) was immediately formed which assumed the status and assets of the 4L. A. F. of L. and CIO named the successor in the three test cases filed before the Board alleging its illegality along with that of the 4L.¹⁸ While the test litigation was pending, both CIO and A. F. of L. made full use of the Board's processes. Rivalry and hostility between the unions and between both unions and management bred suspicion of Agency representatives who worked among them. This provided the most difficult circumstances under which to initiate administration of the act. The situation was indeed delicate, to say the least. Success was achieved only by Agency personnel exercising the utmost caution, fairness, and impartiality. During the first years of administration, the expected criticism from all sources was felt with criticism by unions predominating over that of employers. It gradually disappeared after all parties and factions realized that the Agency existed for one purpose only, effectuation and enforcement of the act irrespective of the identity of the parties involved.

Following the Board's decision in the trio of 4L-IEU test cases in 1940, the IEU disbanded as had the 4L before it. Rivalry and conflict between the A. F. of L. and CIO lumber unions continued with diminished force. Raiding

¹⁸ *McGoldrick Lumber, Potlatch Forest, Inc., and C. D. Johnson Lumber Corporation* (19 N. L. R. B. 887, decided in January 1940).

attempts and jurisdiction strikes likewise lessened all to the benefit of the public, lumber operators and their employees alike.

This progress is clearly demonstrated by this office's caseload which was directly proportional to labor-management dissension at any given time. Exclusive of union-shop elections, this office handled well over 1,000 complaint and representation cases during this period. The following statistics show cases filed for three periods throughout the States of Washington, Oregon, Idaho, Montana, and the Territory of Alaska in the lumber industry, which constitutes approximately 43 percent of the cases involving the Nation's lumber industry:

Fiscal year ending June 1, 1942:

All cases-----	389
Lumber industry cases or 37 percent of the total-----	146

Fiscal year ending June 30, 1951:

All cases-----	801
Lumber industry cases or 19 percent of the total-----	153

Fiscal year ending May 1, 1953:

All cases-----	654
Lumber industry cases or 17 percent of the total-----	114

It can readily be seen that conflict in this industry accounted for 37 percent of the region's caseload in 1942 and that it had been reduced by half in only 9 years. The most recent statistics available demonstrate a still further decline in labor conflict in the lumber industry, and additional progress may be expected in the future. In short, lumber management and labor are negotiating their differences over the bargaining table as Congress intended by passage of the act. They continue to find less and less need to resort to Government intervention or economic force. These facts are doubly significant in light of the tremendous expansion of lumber production with its attendant increase in the number of employers, employees, and union membership.

Present-day strikes are few and, with but rare exceptions, they are limited to disputes arising over contract terms, an issue for which the act provides no immediate remedy. Thus, with lumber production, employment, profits, and wages at history's highest, an industry once torn with labor strife to the Nation's detriment has adopted the principles of collective bargaining and labor-management accord prevails. The objective, farsighted and diligent administration of the act by nineteenth regional office personnel has made an outstanding contribution toward the peaceful labor-management relations that exist today in the lumber industry.

PUBLIC RELATIONS

To maintain constant harmonious relations with all persons with whom the office personnel has relations is, of course, a monumental challenge. The field of labor relations is a living rapport or a continuing dissatisfaction between employers and employees or employer and representative of employees. This may more vividly be portrayed by way of contrast. In private litigation when the issues are resolved by the courts, the contestants are free to go their respective ways. Not so, however, in labor relations. Employers and employees must continue to live together even though they are disputatious. If either bring to this office a matter for consideration and if a hearing is held, at the conclusion thereof the offending party may not go his merry independent way.

In the very concept of this Nation's economy, both parties must continue to work and live together the better to produce to maintain the excellent high standards of the American way of life. To achieve those goals and to assuage the hurts of labor strife the personnel of this office have always extended themselves.

Over the years, cordial relations have been acquired between the personnel and certain employers and their representatives and their counsel. Fortunately, most frequently suggestions are solicited from this office concerning a contemplated course of action. By such consultation, it is possible to avert actions which might breach the statute. So, too, we have been able to suggest processes of the act available, but sometimes unknown to them or unthought of. Seemingly, the more in years unions and employers have experienced labor relations, the less there has been the necessity of resorting to the services of this office.

Within this region are situated the Nation's largest lumber company's operations (Weyerhaeuser Timber Co.); the Nation's largest pulp and paper operators (Crown Zellerbach); the Nation's largest salmon-canning operations (Alaska Salmon Industry, Inc.); the largest copper producer (Anaconda Copper

Mining Co.); the Nation's major aluminum-reduction mills (Aluminum Co. of America, Reynolds Metals Co. and Kaiser Aluminum and Chemical Co.); plants producing heavy aircraft (Boeing Airplane Co.); the Nation's most vital atomic energy facility (Hanford Engineering Works, Richland, Wash.).

Accord early was reached with representatives of those employers and the representatives of the unions of their employees. By reason of mutual appreciation of each other's role in the economy of the Nation, the personnel of the office have brought about an existing era in which labor strife has reached the diminishing point.

Educators from the various universities within the region seek out advice and suggestions from this office for lectures or theses on labor relations. Public bodies, religious institutions, clubs, business institutions, professional organizations, and labor forums solicit personnel of the office to address their members on labor relations matters. The members of the bar of the States within the region and the personnel of the office possess each for the other an appreciation of professional ability, integrity, and dispatch of duty. Commendations of personnel from lawyers, educators, clergy, labor relations consultants, union representatives, businessmen, and public officials are commonplace. Expressions of disgruntlement have been voiced from time to time by ones who have experienced a brush with the law. Outright expressions of criticism are most unusual.

This office has always felt that the finest public relations were developed by handling the problems coming before us in an expeditious, unbiased, and fair manner. We have always felt that labor relations problems should be handled by and between the parties and the governmental agents, when the advice of such agents is sought, and the problems should not be aired publicly in the newspapers. As a result of this policy, there have been very few public criticisms of Board agents and of the handling of cases in this region. We of course should attempt to so conduct ourselves so that there would never be any criticism. That should be our ultimate goal. However, I think it is remarkable when we consider that this region has handled in the 18 years since the passage of the National Labor Relations Act, nearly 13,000 cases. Adverse criticism has involved only very few of this vast number of cases we have processed over the years.

In this office a high degree of mutual respect, straightforward character, and integrity of administration characterizes the field of public relations. If anyone is desirous of making a check or investigation relative to the administration of the act by the nineteenth region of the National Labor Relations Board, I would suggest that the following people be contacted. Incidentally, I have not discussed the matter with any of the individuals I will name hereinafter, but I am sure they will report that this agency has administered the law in an expeditious and unbiased manner and has followed the intent of Congress relative to that administration.

Roy Glover, vice president, Anaconda Copper Co., Butte, Mont.; Thomas Malarkey, M & M. Woodworking Co., 2301 North Columbia Blvd., Portland, Ore.; Alfred J. Schweppe, attorney at law of the firm of McMicken, Rupp & Schweppe, Colman Building, Seattle, Wash.; Hillman Luëddemann, former president, Portland Chamber of Commerce, and vice president, Pope & Talbott, 307 NW Front Avenue, Portland, Ore.; Dean Ballard, employer representative, 1411 Fourth Avenue Building, Seattle, Wash.; John Ambler, attorney at law of the firm of Grosscup, Ambler, Stephan & Miller, Central Building, Seattle, Wash.; Judge O. R. Baum, attorney at law, Pocatello, Idaho.

All of the attorneys I have mentioned represent either a number of different employers or employer associations, or both. It would have been possible to have enumerated many more individuals, but I feel that this constitutes a representative group.

THOMAS P. GRAHAM, JR.

MAY 4, 1953.

To: George J. Bott, General Counsel.

From: Reed Johnston, director, 11th region

Subject: Review of activities of the 11th region (Winston-Salem, N. C.).

It is my understanding that Representative McConnell, chairman of the House Labor Committee, has been kind enough to afford us an opportunity to describe our side of certain testimony recently made to his committee:

I think you have available sufficient material to cover the Morehead City Garment case. As to more general criticisms, I hardly know what to say. As you know I am the kind of person who enjoys getting a job done quickly and quietly.

I wish it were possible that we be liked in the process. I am not optimistic about it, but I do everything I can in this direction. Perhaps I oversimplify to say that there is no cure for hostility to this regional office, or any other, better than greater compliance with the law. Perhaps what follows will show what kind of people we are and the job to be done as we see it.

I. REGIONAL PERSONNEL

My background is as follows: I was born and raised in Millvale, Pa. I attended Duquesne University and the University of Pittsburgh, graduating from the latter school. I have held civil-service positions with the United States Department of Labor and the Board for the past 13 years with a year out for military service. My total service with the Board is a few weeks less than 10 years. Prior to and during my years in college, I worked as a truckdriver, as a finisher in a concrete specialty plant, as a laborer in a steel mill, and operated a gas station.

Prior to coming to Winston-Salem, I worked as a field examiner in the Chicago and Pittsburgh regional offices. For the past 7 years, as officer in charge and regional director, I have headed the Board's Winston-Salem office, except for a few months in 1949-50 when I was detailed to handle representation cases involving Westinghouse Electric Corp., General Electric, and General Motors, arising from the expulsion of the United Electrical, Radio, and Machine Workers from the CIO and the schism in that union.

A total of 26 persons are presently employed in the Winston-Salem office, of whom 14 are in professional classifications and 12 in clerical classifications. This personnel has been drawn from many different parts of the country, although, as would be expected, the majority (17 of the 26) are from North Carolina or the neighboring States of South Carolina and Virginia. Of the other 9, 1 is from Indiana, 1 from Maryland, 1 a native of the District of Columbia, 4 from New York, 1 from Minnesota, and myself, from Pennsylvania. In addition to myself, only Sidney J. Barban, the Chief Law Officer, Harold X. Summers, the Chief Examiner, and Roger C. Davis, the office manager, have been with the Board since prior to the 1947 amendments. We have been with the Board 10, 9, 11, and 7 years, respectively. The service of the others ranges from a few months to 5 years.

Mr. Barban, a native of Virginia, has been employed by the Board from January 1944 to October 1952 as a staff trial attorney in the Baltimore office. He transferred to that position from Charlotte, N. C., where he had been law clerk to Judge John J. Parker, senior judge of the Circuit Court of Appeals for the Fourth Circuit which has jurisdiction over the area which was covered by the Baltimore office and over the area covered by this office. Mr. Barban was educated at the University of Virginia and took his law degree there. He is a member of the Virginia bar. He has also been admitted to practice in Maryland.

In addition to his duties as trial attorney in Baltimore, Mr. Barban has argued cases for the Board before the Fourth and Fifth Circuit Courts of Appeal. As senior trial attorney in Baltimore, under the Chief Law Officer, since the effective date of the Taft-Hartley Act, Mr. Barban was engaged on several important cases including trial of the first case against the International Typographical Union and several cases involving the United Mine Workers.

Mr. Summers came to the Board in December 1941. He worked as a field examiner at the Board's Chicago, Buffalo, and Philadelphia offices and as a trial attorney in the Philadelphia office before assuming his present duties. A native of Indiana, he attended the University of Chicago, from which he received his law degree and a masters' degree in industrial relations, and the Wharton School of the University of Pennsylvania. He has published articles on phases of labor relations and has conducted extension courses on related subjects for Penn State and Rutgers Universities.

II. ESTABLISHMENT OF THE OFFICE

As a separate office, the Winston-Salem office has been open for 7 years. Until the creation of the 11th region in October 1952, it was a branch of the Baltimore regional office and processed cases in North Carolina only. South Carolina was added when the region was formed. As a subregional office, we were responsible for all phases of case handling except the formal hearing on representation cases and the trial of unfair labor practices. These phases of case processing were handled by the Baltimore office under the supervision of the Chief Law

Officer and the regional director. In April 1952, in order to conform with procedural changes in the handling of representation cases put into effect at that time, responsibility for such cases at all stages was transferred to the subregion.

The reason for opening a North Carolina office in the first place was that case filings from this area had increased to the point where time and travel considerations made it administratively unwise and expensive to continue to service North Carolina cases directly from Baltimore. The subregional office first opened with only 2 examiners and 1 clerical employee. It was felt at that time that this staff, with legal service continuing to be rendered from Baltimore, would be adequate. However, the volume of case filings continued to increase sharply and additional staff was added from time to time. As the caseload expanded and the staff increased I became less and less a "working foreman" and more a full-time supervisor. By 1952 it was apparent that the office had outgrown subregional status, and it had become increasingly impractical to continue rendering legal service from Baltimore. It was for these reasons, and to expedite case handling in this area, that the separate region was established. The growth of the office reflects the steady increase in case activity in his area.

III. INDUSTRIAL COMPOSITION OF THE AREA

Chief among the factors which have brought about the consistent increase in case filings over the past several years have been: (1) the very rapid industrialization of the area, including the introduction of new industries and the tremendous expansion of existing industries; (2) the very limited extent of self-organization of employees in this area, probably less than 10 percent in textiles and furniture and not much more than that in lumbering; (3) the vigorous resistance with which many employers counteract efforts of their employees to exercise their right to self-organization.

In my judgment, all of these factors will continue to exist throughout the foreseeable future, and barring unforeseen developments, will cause case filings in this region to continue increasing.

Should labor organizations become more firmly established and mature in this area, it would be logical to expect certain changes in the types of cases filed with us. There may be an increase in petitions seeking a change or discontinuance in bargaining authorization and there may be an increase in the filing of unfair labor practice charges against labor organizations. At this time, these developments are speculative, for the factors which could cause them do not now exist.

The principal industries of this region are textiles, lumbering, furniture, and tobacco, although new and varied industries are developing here and moving here from other parts of the country at a tremendous rate. In recent years we have had comparatively few cases in the tobacco industry and our principal sources of cases have been in the other three leading industries. Except for the tobacco and commercial fertilizer industries, in which a majority of the nonseasonal employees are organized, the self-organization of employees in this area is very limited and practically all of our cases arise from the efforts of unorganized employees to organize—a very few from a desire to change affiliation.¹

The Winston-Salem office is unique among regional offices in that it is located in a small city and that within our region there is no large city. The explanation is that industry in the Carolinas is probably more decentralized than in any other part of the country. Almost every town from the ocean to the mountains has some industry. Our cases follow the same pattern, although usually case filings are heavier from the more highly industrialized Piedmont area. Normally the greatest concentration of case filings is in the Winston-Salem, Greensboro, High Point, Lexington area which is the most populous and most industrialized area in the region but even that concentration of cases does not usually account for more than 15 to 20 percent of all case filings. The location of industry in this region accounts for the fact that although the distances our field examiners and attorneys travel to process cases in the field are not as great as in some western regions, our field people probably spend more time in travel status than those in other regions and handle more of their cases away from regional office headquarters.

IV. ADMINISTRATIVE SETUP OF THE REGION

Administratively, the regional office is organized in four departments: a legal department composed of 6 attorneys reporting to Mr. Barban, the chief law

¹ This was not entirely true during 1952, when we processed several representation cases in the textile industry, arising from the schism in the TWUA-CIO.

officer; an investigation department composed of 7 examiners reporting to Mr. Summers, the chief field examiner; a clerical department composed of the usual clerical units, dealing with non-Communist affidavits, elections, docket and the stenographic pool reporting to Mr. Davis, office manager; and the compliance department (handling problems of compliance with orders of the Board and decrees of the courts) composed of field examiner Frahm and a clerical assistant. Messrs. Barban, Summers, Davis, and Frahm report to me. Except for having a special compliance department, our administrative setup conforms to that typical in other regional offices. In our case, the very large volume of compliance work has made it desirable to have the separately handled rather than as an additional duty of the investigation department.

Fortunately, our staff (and our caseload) are small enough that liaison and supervision have never been a problem. For example, no case has gone to trial in which Mr. Barban was not intimately familiar and I at least generally familiar with all details of both pretrial preparation and the actual trial presentation. Prior to Mr. Summers' assignment here, I directly supervised the field examiners in the investigation of cases and made it my business to keep intimately familiar with the progress of all investigations of unfair labor practice charges and with the processing of all petitions for certification of representatives. Mr. Summers now has primary responsibility for these matters and my relationship to them is the same as to the legal phases of casehandling, for which Mr. Barban is primarily responsible.

During the past year, we have greatly expedited the processing of all types of cases. In keeping with the record nationally, we have decreased the lapsed time from filing to issuance of notice of hearing in representation cases from 35 days in March 1952, to approximately 4 days in March and April 1953, with the result that representation cases requiring decision by the Board have gotten to the Board in approximately 1 month less time than a year ago. In unfair labor practice cases, we feel that we have not entirely solved the problem of lapsed time, although there, too, there has been very substantial improvement. For example, the lapsed time from filing to issuance of complaint, for those cases in which complaint issued in March and April 1953 was substantially less than half that for those cases on which complaint issued in the same months a year ago. We are still working on this problem, however, and hope for further substantial reductions.

The limited extent to which industrial workers in this area have organized, is reflected in the types of cases filed with us. Since the passage of the 1947 amendments, we have docketed 626 charges of unfair labor practices; of these 608 have been filed against employers and only 18 against labor organizations. It may be of interest to note the disposition which has been made of these charges.

Disposition of charges against employers¹

statistics.

1. Withdrawn (lack of merit, lack of proof, charging party did not wish to proceed, etc.), 291 or 47.5 percent.
2. Dismissed (lack of merit, lack of proof), 103 or 17 percent.
3. Informal settlements, 66 or 11 percent.
4. Complaints issued, 94 or 15 percent.
5. Pending (under investigation; under review; tried and pending with the Board; dismissed and appealed to the General Counsel), 71 or 12 percent.

Disposition of charges against labor organizations

1. Withdrawn (lack of merit, lack of proof, charging party did not wish to proceed, etc.), 9 or 50 percent.
2. Dismissed (lack of merit, lack of proof), 6 or 33½ percent.
3. Informal settlement, 1 or 5½ percent.
4. Complaints issued, 1 or 5½ percent.²
5. Pending, 1 or 5½ percent.

During the same period, i. e., since the passage of the 1947 amendments, we have docketed 581 petitions for certification of representatives, of which 522

¹ The total of these figures comes to more than 608 and the total of the percentages to more than 100 percent because certain cases were informally settled or withdrawals accepted after complaint had issued so that such cases are counted twice in these

² Injunction was also sought and secured in this case.

have been filed by labor organizations, 20 by employers, and 39 by individuals or groups of individuals seeking decertification of a recognized labor organization.

Chairman McCONNELL. Mr. Metcalf?

Mr. METCALF. Mr. Chairman, I think that you have answered the comment I was going to make. I was going to inquire as to the status of this Morehead case, because he was interrupted while he was reading the statement of Mr. McCormick, and since the whole Morehead case is in the record, and the rest of Mr. McCormick's statement is also in the record, I have nothing further to add.

Mr. BARDEN. The whole case is not in that record, but what I have put in with it will mighty near make it a whole case.

Mr. HOLT. I notice at the tail end of this presentation of Mr. Bott's here, there are some statements, such as the one from Mr. Howard LeBaron, director of the 21st district, which is Los Angeles and Arizona. Is that going to be included in the record?

Chairman McCONNELL. Where an individual's name has been mentioned, that individual will have the opportunity, and in fact he has been invited to submit his statement, which will be made a part of the record.

Now, if the case is discussed, that is also a part of the record, so I think it ought to be rather complete.

Mr. BOTT. You also said, if you will recall, that where the regional office was mentioned, as such, as a regional office—and there were four of them—that their statements could be put in.

Chairman McCONNELL. We have already received their statements into the record, and we received them this morning. So I presume that that would be among them.

Mr. HOLT. I just wanted to make sure Mr. LeBaron's statement was in there.

Chairman McCONNELL. There are some other questions that I know we want to ask, and I know there are 1 or 2 I want to ask.

Mr. McCabe, will you take over, and I may come in while you are asking certain matters. I want to particularly ask about carving out craft unions, and there was just a decision made here the other day concerning the W. C. Hamilton Co., a paper-manufacturing company, right in my own district, and if I remember correctly, about 9 or 10 electricians were ordered within a very small company. I just cannot figure why all of this carving-out process, when for many, many years they have bargained under 1 union in the company.

Mr. BOTT. On these general questions, I think we will have to make some decision as to who is going to answer them. I think I would like to pass the representation craft unit severance problem, because I follow Board decisions on that, and I have got some general views, but I have not been up to date in years.

Chairman McCONNELL. We will have to rely on your decision as to who will answer it.

Mr. BOTT. I would like that very much.

Chairman McCONNELL. The New York Times has an editorial condemning it very strongly, and I want to know why this W. C. Hamilton Co. was so carved up.

Mr. STYLES. Mr. McConnell, the whole question of craft versus industrial unionism, of course, have been going on in this country for many, many years. The Board had a policy prior to the passage of

the amendments to the act in 1947, which provided that we would give, I suppose, almost controlling weight to bargaining history and prior Board determinations.

When the first case came before the 5-man Board, I was not a member at the time. In 1947, I think it was, or the first part of 1948, it was brought to the Board's attention that Congress, in passing the amendments, had inserted section 9 (b) (2), which provides in essence that the Board shall not decide that any craft unit is inappropriate for such purposes on the ground that a different unit had been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation—and then the section goes on to other subsections.

The argument was made that the Board must of necessity, as under the Railway Labor Act, give craft units wherever asked for, and the Board decided that was not true; that was not the congressional intent. The majority of the Board decided that the congressional intent was that we liberalized our policy on giving craft unions elections in industrial plants.

That has been the policy followed by the Board since that time, with several notable exceptions—the steel industry, the basic aluminum industry, the sawmill industry on the west coast particularly, and the so-called wet milling industry in cereal milling.

If that is not the congressional intent, the Board welcomes advice from Congress. It is a tough question, and we know that, and if the committee will permit me the luxury of the expression, we go through the tortures of the damned on each one of those questions. We have to resolve what to us is one of the toughest problems in the business, that is whether or not you should deny, say, a group of skilled machinists, who may be within an industrial bargaining unit, the right to be represented by a craft union of their own choice.

Now, industrial units make a lot of sense, and so do craft units, and it is a case-to-case proposition. If the Congress wishes to give us more guidance on that, we will welcome it; and we will not only welcome it, but there will be shouting in the streets.

Chairman McCONNELL. I get the definite impression that your policy has not been consistent in carving out craft units.

Mr. STYLES. I do not think that that is right. We have been as consistent as we could be, and I am not trying to give you a lot of words. I am trying to be just as frank and forthright as I know how to be. I myself am a former craftsman, and I was a newspaper printer and a linotype machinist, and so forth; and I think as much as anyone else in the business, if I can pat myself on the back, I know what a craftsman is. I have worked with them for years.

I know that on those questions where we did not carve them out, in the case you mentioned, you will recognize that we said, "These are not craftsmen." We denied some of the petitions I think one by the blacksmiths and as I remember there were others also.

We have decided cases within the past 3 years since I have been on the Board, in which I successfully prevailed in the discussions to get a little tighter as to whether the people were truly craftsmen.

But it seems to us that from a reading of the statute, and from the legislative history, that it was the intent of the 1947 Congress that we should be more liberal in granting craft units.

I do not say this in any spirit of levity, and I want the committee to understand that. If the Congress wishes to give us more guidance, you have the word of this Board, plus the word of its acting chairman personally, that we will follow it without any argument.

I do not believe in arguing with Congress. You gave us an act, and I was appointed to enforce it, and that is what I am going to do.

Chairman McCONNELL. Is it the Board's thought that the intent of Congress and the act requires that you agree to every petition to carve out a craft unit in a plant just when they submit it?

Mr. STYLES. No, sir. The cases I mentioned are evidence that we do not believe that. We do not operate on that premise. In certain industries we have said that craft units do not work well, and, therefore, we do not grant them.

But the history of papermaking—this particular case, as I remember it, involved a paper company.

Chairman McCONNELL. Not a large one.

Mr. STYLES. No, sir, it was very small; and I will say this for the benefit of the committee's records, since the chairman has not mentioned it: Apparently the collective-bargaining history in that plant had been very successful on an industrial-union basis. But earlier we had some leading cases involving the International Paper Co.—which, of course is, I suppose, the giant of the industry—in which we pretty well laid down the policy for the paper industry, where we found that historically those plants were organized on a craft-unit basis.

I do not see how we could have applied the National Tube principle to say that in the paper industry crafts will not work, even though in this case it was true that industrial unionism was working wonderfully there.

Chairman McCONNELL. I think the New York Times mentioned that you had ordered nine separate elections. Why, that is fantastic, with the size of this company. It is a small company. I just cannot figure it out.

Mr. STYLES. Mr. Chairman, I cannot find it in my heart to argue with you on that score, but under the act and its legislative history I do not know what else we are going to do.

Now, actually this is an issue between the AFL and the CIO, and every case that they come into where there is a craft union involved—

Chairman McCONNELL. This is an independent union involved here.

Mr. STYLES. That is right, and ordinarily you find that your independent is organized like the CIO is, on an industrial basis; and once in a while there are a few independent crafts, of course, but not too many. But the AFL, by and large, is still organized on a craft basis.

If we were to say that we will not sever crafts and we will not grant craft units, we would be saying, "We will put the American Federation of Labor out of business in the industrial field." Congress in section 9 (b) (2) wrote a prohibition against that.

Chairman McCONNELL. I would not advocate that you say you should not grant craft units. I am just asking if you have a consistent policy, and it does seem, as I say, rather absurd that a small company should suddenly have to conduct 9 separate elections. Even a big company would be upset by such a policy, but in the case of a small company, it is hard to understand.

Mr. STYLES. I agree with that, Congressman, and since we are speaking of consistency, I think we have been consistent. God knows, I have tried to be, and I know the other members have sweated blood and tears over this same difficulty, and we have spent, I think, as much time on this problem in Board meetings as any other problem we have had in the 3 years I have been a member.

I know, too, in my office I have what amounts to a young machine shop and foundry, and whatnot, library that I bought myself so that I could refer to the authorities for guidance on what a machinist is supposed to do. I check that record; and also what does a pattern-maker do, and so forth, respecting other crafts. You have got to be a quasi expert on everything when you start deciding unit questions, whether it is industrial versus craft, or vice versa, and particularly where jurisdictional problems are at issue.

We have done everything we can on that score. We appointed a very high-level staff committee, the very best people we could find, to study that whole problem, some 2 or 3 years ago. It is tough. I am afraid it is getting worse.

Mr. WAINWRIGHT. Mr. Chairman?

Chairman McCONNELL. Mr. Wainwright.

Mr. WAINWRIGHT. I was particularly interested in what you mentioned, the lack of flexibility or the consistency of the policy there, that therein lay the fault. In other words, you, the Board, apparently, following stare decisis, applied what is good for the largest paper industry in the country to a very, very small, well-run plant that had a good history, as you have stated, of labor relations, which created a turmoil situation.

Mr. STYLES. Mr. Wainwright, I do not know that I could really answer your question, but let me make a statement I think, perhaps, might answer that.

Let me say the A. F. of L., itself is scrapping within its own confines as to what its policy is. The Paper Makers' Union, the Pulp and Sulphide Unions, and the Machinists' Union, the IBEW, are arguing. The papermakers and the pulp and sulphide want an industrial unit there. They had it in some places; in others they bargain jointly with the other craft unions to try to lay down a flat policy.

We had to do it on a case-by-case basis and use as much case law as we can find behind us to hang our hats on as we go.

Mr. WAINWRIGHT. In other words, you and I are saying the same thing, that each individual situation has to be looked at in its complete context and surroundings, and apparently the particular example we are discussing now, at least from what I know about, from what I have heard here today, would appear wrong.

Mr. STYLES. Mr. Wainwright, it is a question of value judgment in each one of them. If you will notice, this company makes some of the best paper in the world. I am an old printer, and I know Hamilton Paper and I know it is top paper. That company really employs top craftsmen as papermakers. You remember the real craftsmen in the paper industry would always actually be the fellow who ran the machine in the old days. The people that work for Hamilton, of necessity, must, in making that luxury product, be top people. So when the Board looked to determine whether these people are craftsmen, the answer to the thing was rather obvious. Certainly they are craftsmen. The question of whether or not to sever them goes back

to what I think the Congress itself is going to have to tell us. Do you establish craft units or do you establish industrial units?

Mr. WAINWRIGHT. Does the Board have no discretion in investigating all of the facts involved and reaching a determination which might apply to this company which would—

Chairman McCONNELL. I do not understand this; it just does not make sense.

Mr. STYLES. We have all of the discretion, I think, that an agency could have and certainly should have. But what we have done is to read the legislative history made in 1947 when witness after witness assailed the then Wagner Act Board because the Board had adopted the American Can principle, under which the crafts felt they had been frozen out.

Perhaps we have gone too far in the other direction, I don't know. That is why I think, as we have said before this committee and before the Senate committee, we would like you to tell us if Congress has changed its policy since 1947; if so, we will gladly accommodate ourselves to the change.

Mr. WAINWRIGHT. I yield back, Mr. Chairman.

Mr. STYLES. We believe we are doing what Congress directed us to do, but if you will pardon the expression, we come to teacher and say, "If we are wrong, and you will tell us what to do we will do it."

Mr. WAINWRIGHT. I have finished. I will take up after Mr. McCabe is through.

Chairman McCONNELL. Mr. McCabe.

Mr. McCABE. Mr. Bott and Mr. Styles, I want to discuss two cases which were referred to this committee by other members of the Congress. I do not have too many facts on the first one, and you may wish to make some response to the Member who posed the question in the first instance. It is the Honorable Joseph W. Martin, Speaker of the House. He refers to us the case of the Ty-Car Manufacturing Co., Holliston, Mass.

His correspondent tells him that the UAW-CIO announced that it was its intention to put this company out of business.

This correspondent further states that the UAW-CIO is getting strong support from the Boston office of the National Labor Relations Board in this effort. He prefaces his story with that comment.

In September of 1951 the employees of this company voted to join local 422 of the UAW-CIO. In August of 1952 the company gave a unilateral 10-cent-per-hour wage increase. Unfair labor practice charges were filed and upheld by the Board.

A consent agreement was signed November 13, 1952.

Meanwhile, in October 1952 an employee of the company filed a decertification petition. He had signatures from approximately 75 percent of the workers. This petition was turned down by the Board because of the unfair charges which I referred to a moment ago, "and," the correspondent of Speaker Martin continues, "because the company, at the employees' request, obtained petition forms."

He continues to say that on March 4, 1953, an employee of this company filed another petition with the Board for a decertification election. The petition was signed by 100 percent of the employees. The company had no prior knowledge of this petition. It received notice from the NLRB and was asked to supply certain information

for a hearing to be held on March 20. At the request of the union, the hearing was put off until March 31.

At 5 p. m. on March 30 the company received a telegram from the NLRB stating that the hearing had been canceled because of charges of unfair labor practices brought by the union. The company has not yet learned the basis for these charges.

Then on April 16 this employee, who on March 4 had filed a petition with 100 percent signatures, received notice from the NLRB that his petition had been rejected because there was "No question concerning representation."

That, in substance, is the chronology as this correspondent has presented it to Speaker Martin, and as he, in turn, has given it to the committee.

I know you cannot be familiar with the case, of course. I cite the facts so they will be in the record in order that you might make whatever response you care to to the committee or to Speaker Martin.

But one question that did occur when several of us discussed the matter prior to today's hearing is whether any of you gentlemen would care to comment on this response of April 16 which said that "No question concerning representation exists," when on March 4 the employee filed a petition with 100 percent of the employees signatories thereto.

Mr. BORT. I could only guess, Mr. McCabe, make a guess which might not be based upon the facts, as to possibilities. I would rather check.

I will write directly to Speaker Martin and give him a full report on it.

Mr. McCABE. I wanted to raise it because some members of the committee were concerned over this idea that no question concerning representation existed while 100 percent of the employees in the unit had signed a decertification petition.

Mr. BORT. It would be pure speculation. There are possibilities of petitions, for example, where they are obtained with company support. You would say there was no question, I mean no real question. But I don't know. There might be a contract bar that might have been entered into in the meantime. I doubt that, in view of the way you describe the case and the trouble they are having there. But maybe it happened. I think the best thing for me to do is get the whole story and see that it is given to Speaker Martin adequately.

Chairman McCONNELL. Is it the thought of the Board that elections will not be held while there is pending an unfair labor charge? If so, why is there such an idea?

Mr. BORT. The general theory is that if there is an unfair labor practice charge pending that has some merit to it that you cannot have a free election, a fair election.

Chairman McCONNELL. Why would that be?

Mr. BORT. Not necessarily, but I will take the simple case. If an election is pending among 20 employees, and let us take an extreme case, the company fires 5 employees illegally and clearly because of their union activity, you could not have a free election in those circumstances because the employees are intimidated and they know that if they join the union or vote for it they are liable to lose their jobs.

The atmosphere is not good for an election if unfair labor practices are going on. That goes for union unfair labor practices as well as employer practices, unless they are waived. That is the general rule. In fact, it is a pretty universal rule, and it is a rule of the Board.

Mr. McCABE. Of course, in this case we have no information on the nature of the unfair practice charges which were filed, as I recall it, just prior to or contemporaneous with that petition.

Mr. BOTT. Yes, sir. What we try to do, I think, Mr. McCabe, is we try to investigate those charges as fast as we can, to put a couple of people on them to see if they are real or not, if there is anything to them. If they are not we dismiss them and hold the election.

Chairman McCONNELL. It says here:

In August 1952 the company gave a 10-cent-per-hour wage increase in order to obtain additional help although operations had been at a loss for 2 years. The company was wrong under the terms of the contract in granting this unilateral wage increase although we had an unwritten understanding with the union that we would raise wages as soon as our financial condition permitted.

The union filed unfair labor charges against the company for the above violation and the charges were upheld by the NLRB. A consent agreement was signed November 13, 1952.

They call that an unfair labor charge. I am wondering what it would have to do with a decertification election.

Mr. BOTT. There could have been a refusal to bargain by the company. This is what I say I can guess, and I can usually guess. There are 5 or 6 different things that can happen, and you get to know them all.

The company had the UAW, as I understand it, as its bargaining representative. It had a contract with it. If they have given a wage increase, as we say, unilaterally without consulting the union, without bargaining with the union about it, that could be a refusal to bargain and an unfair labor practice. I do not say that it is, but it could be. And, therefore, if there was an unfair labor practice, the decertification petition would have to be postponed temporarily until we cleared up the unfair labor practice. That is the general scheme of things, but only an investigation would show what the actual facts were.

Chairman McCONNELL. Of course, if either side wanted to delay an election where they thought they might not win, they would quickly put in an unfair labor practice charge.

Mr. BOTT. That is right. We have an instruction on that. That is an old gimmick in the labor field. Our instruction goes under the heading of "Last-Minute Charges." They are supposed to be investigated in 48 hours and either found to have merit or thrown out fast. And on occasion we have actually held the election and investigated the unfair labor practice afterward, on the theory that maybe 1 out of 3 of them were no good anyway.

But we have tried to develop our own devices to protect our processes against abuse by people, unions who will use that artifice of trying to block an election. That is a real problem. That is in the field manual, Mr. Holt.

Chairman McCONNELL. Well, then, going on it says here:

On March 4, 1953, an employee of Ty-Car filed another petition with the NLRB for a decertification election. The petition contained the names of 100 percent of our employees. This time the company had absolutely no prior knowledge of the action. The company received notice from the NLRB of the petition and asked us to supply certain information for a hearing to be held March 20.

At the request of the union the hearing was put off until March 31, the earlier date apparently conflicting with the UAW convention in Atlantic City. At 5 p. m. on March 30 the company received a telegram from the NLRB stating that the hearing had been canceled because of charges of unfair labor practices brought by the union. The company has not yet learned the basis for these charges.

Mr. BOTT. What is the date of that, sir?

Chairman McCONNELL. April 30 this was dated, and this says 5 p. m. March 30 the company received a telegram. I imagine that is the date they refer to.

Mr. BOTT. I am sure that if there is anything to it they know about it by now.

Chairman McCONNELL. It says:

On April 16 our employee received notice that his petition for a decertification election had been turned down "as no question concerning representation exists."

I do not know what that means.

Mr. BOTT. It could mean that the unfair labor practices that were filed are valid. It could mean that the UAW-CIO withdrew its claim to be the bargaining representative. That I doubt, but it could be, and that would make the question of representation disappear. In other words, if there is no incumbent union, if they withdraw, then you do not have anything left to decertify. However, on the dismissal of that petition there is an appeal to the Board, and here is where I pass the buck. They can appeal to the Board, who can review the regional director's action to see if it was proper. In the meantime I will get the whole story and see what I—

Chairman McCONNELL. It seems to me there must have been something lacking in our law or something lacking in the thinking of the Board in administering it. I do not know where it is, but something sounds awfully screwy about that situation, too.

Mr. SMITH. Mr. Chairman?

Chairman McCONNELL. Mr. Smith.

Mr. SMITH. Do I understand it, then, that where a decertification has been filed in a company that if the union involved would file an unfair labor practice charge you would not do anything about the decertification?

Mr. BOTT. No. If a charge is filed in any case, whether it is a decertification petition or a representation filed by a union, you investigate the charge as fast as you can to prevent it from blocking the decertification or the petition. If it is a good charge, in other words, if it turns out that there really was an unfair labor practice, you would not process the petition until you had cured the unfair labor practice. Many cases have no merit to them, and as soon as they are investigated they are dismissed, and then you would process the decertification petition. That is the general rule; yes.

Mr. SMITH. Then a willful union could just keep filing new charges and they would never get to an election or decertification.

Mr. BOTT. They try it sometimes, but we try to keep on top of that. And, as I said, we have this instruction which is in that manual as to how to investigate on last-minute charges, charges which are filed—we call it companion cases—when you have a petition and a charge. We give a priority to it. I think Mr. Merrick could pull out the instruction there. We give a priority to it and we try to investigate it very fast and dismiss it.

But it is true, I want to admit, that an unfair labor practice case filed, when there is a question of representation, can delay it, and it can be abused, and we try to stop it from being abused. But it goes back to that original doctrine that if there really are unfair labor practices then that is no time to have a fair election.

Mr. SMITH. I will yield to Mr. McCabe.

Mr. McCABE. Gentlemen, that brings us to the case which was referred to the committee by Congressman Paul Shafer, of Michigan. You may be familiar with that one. There has been correspondence between the Board and Congressman Shafer. It involves the Albion Malleable Iron Co. at Albion, Mich.

In that case, if I can briefly reconstruct the facts, the molders and foundry workers, A. F. of L., had been the bargaining representative for the employees of this company since about 1937. Early this year the UAW-CIO petitioned, and an election was held. There were about 500 employees involved. The decision was determined by one vote. Both the company and the A. F. of L. union filed unfair labor practice charges against the CIO. Notwithstanding the pendency of these charges, a certification was issued and the UAW-CIO became the bargaining representative of those employees. I think that certification was issued late in April. At that time the charges of the company and of the other union were still pending.

I learned today from one of the committee members that telegrams were received by the company and by the A. F. of L. union last night, telling them these charges were dismissed. But the committee would appreciate some comment on the situation which permitted certification of the UAW in this instance despite the pendency of charges by the opposing union and by the company. I wonder if you gentlemen are prepared to give the committee any information on that matter.

Mr. BOTT. I do not know too much about it. I do know something about it. I read the Congressional Record on it.

I understand that there has been correspondence between Congressman Shafer and Chairman Herzog for the Board, and Mr. Styles has something on it. He might be able to help the committee.

Mr. STYLES. If you would like, Mr. McCabe, I think I can best report this to the committee by reading the Chairman's letter to Congressman Shafer dated May 1, 1953.

Mr. McCABE. Could you give us the substance? You can do it either way.

Mr. STYLES. This is really an involved situation. I do not want to take up your time. Perhaps you could just let me present this for the record.

Mr. McCABE. I have no objection.

Chairman McCONNELL. It is perfectly agreeable to read it, but there is one question in my mind. If you will not continue with decertification if an unfair labor practice charge is pending, do you continue with certification if an unfair labor charge is pending?

Mr. STYLES. It all depends on the circumstances, Mr. Chairman.

Chairman McCONNELL. I thought no case was either certified or decertified if an unfair labor charge was pending.

Mr. McCABE. How do the circumstances differ?

Mr. STYLES. If a charge is filed before the election by the labor union petitioning for the election, we will not go ahead unless they waive

that charge as a basis for objecting to the election. If they waive we will go ahead, because they are saying, "We are willing to go ahead in the face of these unfair labor practices." We say, "Well, you take your choice there." But if a charge is filed as a nuisance charge, or in the nature of postelection challenges—as it seems that perhaps in Albion Malleable Iron Co. that very well may have been because, as I read the Chairman's letter, the charges themselves were contained in the original objections to the election which were overruled by the regional director. In such a case we go ahead. As a matter of fact, in order to keep my dates straight on this particular case, about the only thing I can do is read this to you.

Chairman McCONNELL. You read it, and we will continue this talk a little more. I am not quite convinced of a number of things here.

Mr. STYLES. This is a letter of May 1, 1953, addressed to the Honorable Paul Shafer, House of Representatives, re Albion Malleable Iron Co., case No. 7-RC-1991:

DEAR CONGRESSMAN SHAFER: It had been my intention to supplement our letter of January 26, 1953, in answer to yours of January 25, shortly after issuance of the Board's decision and certification of representatives on April 20, and to enclose therewith a copy of our decision in the Albion Malleable case. We have since delayed doing so pending an opportunity to describe, at the same time, the factors involved in our issuance of the decision and certification upon which you commented in the House of Representatives on April 23.

Your letter of January 25 requested detailed information concerning the conduct of the election on January 16, 1953, and an "opportunity to review same prior to official certification by the Board." On January 26 we gave you all the information then in our possession pointing out that the case was still pending in our regional office in Detroit. We assumed then, and would like to continue to assume now, that your request to review same did not import a desire to share this Board's quasi-judicial responsibility to decide the case on the record. If this assumption is wrong, I can only express regret that we did not tell you why we thought it would be improper for us to do so. Of course, the record in the case is now available should you desire to inspect it.

Your statement of April 23 criticizes the fact that the Board's decision became known to the UAW-CIO on April 21. It has long been the Board's policy to mail copies of its decisions simultaneously to all parties and their representatives. While the regional director's objections and exceptions were awaiting determination by the Board, the Washington representative of the UAW-CIO asked that it be served with a copy of the Board's ruling on the objections. Consistent with long-established practice concerning such requests, which are frequently made by employer and A F of L and CIO counsel or representatives located in Washington, D. C., the request was granted as a matter of routine, exactly as would have been done if the Moulders A F. of L. or the employer had had a Washington representative.

Consequently, a copy of the decision and certification was mailed to the Washington representative of UAW-CIO on April 20, 1953, at the very same time that copies were mailed to the parties and all representatives of the parties in cities located in Michigan, Illinois, and Ohio. The Washington representative must have received his copy on the following day, April 21, and probably telephoned or telegraphed his associates in Michigan, whereas the mailed copies reached Michigan on the 22d. That he did this was indeed regrettable, but it hardly justifies your characterization of what happened.

Long Board experience with the problem of mailing decisions to parties and their representatives, when located in different communities, has demonstrated that efforts to adjust mailing to geographical locations and mail schedules so as to provide simultaneous notice are so difficult and expensive to administer that they cannot be successful for an agency that sends out dozens of formal papers every day. Where, for example, there are three parties of record in a proceeding involving a plant in the Middle West it is not uncommon for counsel to be located, respectively, in Milwaukee, Pittsburgh, and Washington or New York. It is manifestly impracticable to withhold mailing notice to counsel in New York or Washington for 1 day, to allow for simultaneous delivery service

in the more distant Milwaukee or Pittsburgh. The Board long since established the practice, which is likewise followed by most Federal courts in cases of geographical dispersion of parties, of mailing copies of documents such as that in the Albion case simultaneously to all parties and representatives who requested service. The only exception we still try to make to the simultaneous mailing rule, despite the practical problems involved, is when a direction of election issues, for their substantial prejudice may result if one party gets even a day's advance notice.

Mr. McCABE. Mr. Styles, there is another question in the case right on that point. Before you go to the unfair-practice discussion, may I raise this other point?

Mr. STYLES. Yes.

Mr. McCABE. Congressman Shafer, as you have indicated in your reply, questioned the propriety of the UAW's learning the result in advance of the A. F. of L. The A. F. of L. union complains that this prejudiced another election involving the same two unions at another plant, not of this company but in the same area. I would like to know whether this Washington representative of the UAW-CIO was a representative of record in this case? Is that a distinction made by the Board?

Mr. STYLES. We do not make that distinction in cases, Mr. McCabe. We get a lot of requests, for instance, from Members of Congress that when a particular case is decided they would like a copy of the decision. That decision is mailed out to the individual the very day that it goes to the parties.

Mr. McCABE. In a situation like this, it is possible to prejudice a union.

Mr. STYLES. Well, we won't do this—

Mr. McCABE. And it could also prejudice the company in this instance. I wonder if you have given any thought to restricting notices to people who appear as attorneys of record in the matter.

Mr. STYLES. We have tried, I suppose, every device known to mankind to be sure that everybody got the notice at the same time, including the device that if you represent the union and live in San Francisco and your counterpart on the other side or other union lives in Chicago, we tried to figure that thing out so that everybody received it at the same time by sending it airmail to San Francisco and airmail to Chicago and straight mail to New York. It did not always work even then. I have known when I was regional director in Atlanta of a union getting the notice 2 days in advance of another union, and sometimes the company got it a couple of days in advance simply because the mail service apparently broke down somewhere along about that time.

Chairman McCONNELL. Was this notice a matter of mail delivery in distant geographical points or did the Board give the UAW-CIO here in Washington a copy of the Board's ruling ahead of everybody else?

Mr. STYLES. No, sir. The mail was all dropped in the slot at the same time and it always is.

Chairman McCONNELL (reading):

The Washington representative of the UAW-CIO asked that it be served with a copy of the Board's ruling.

Mr. McCABE. That is the point I was asking about.

Chairman McCONNELL. What does that mean?

Mr. STYLES. That is a little loose use of terms. We only serve in the legal sense the official copies of it on the parties who were there at the hearing appearing as of record. These others are courtesy copies, as I have stated. There are a number of A. F. of L. unions in town, a number of CIO unions, and some employer associations who ask that same service and who get it without question.

Chairman McCONNELL. Was the A. F. of L. served with a copy at the same time the UAW-CIO was served with a copy?

Mr. STYLES. Yes, sir; the A. F. of L. and the company were served—

Chairman McCONNELL. You do not indicate it here.

Mr. STYLES. They were, though.

Mr. McCABE. That is the objecting union, the A. F. of L. union—

Mr. STYLES. Their copy, if you will pardon me, I can clear up Chairman McConnell's question, their copy probably went registered mail. I am almost sure it would because they were the real interested parties in the case, and we would serve them by registered mail, which would mean actually that they would get it later anyway because registered mail takes longer.

Mr. McCABE. The A. F. of L. union objected to the election.

Mr. STYLES. That is right.

Mr. McCABE. The CIO union was also involved in the election, and you mailed copies of the results to both at the same time.

Mr. STYLES. That is right.

Mr. McCABE. And they are both located in Michigan.

Mr. STYLES. That is right.

Mr. McCABE. And presumably received their mail directly, possibly even at the same hour. However, the point which Congressman Shafer objects to, and which the A. F. of L. union objects to, is that the CIO representative in Washington, who, we are told, was not entered as a representative of record in the case, was given this courtesy copy.

Mr. STYLES. That is right.

Mr. McCABE. In other words, the A. F. of L. union says that this Board courtesy to CIO prejudiced the result of a later election.

Mr. STYLES. I think any procedure that we adopt on mailing decisions and directions of election and certifications, and things of that sort, may work to the disadvantage of someone. All we can do is do our very best to be as honest about it as we know how and give everybody an even break. In the case of a direction of election it does make a big difference.

Mr. McCABE. There is probably no objection to mailing the results to one representative in San Francisco and one in Washington on the same day. That is their tough luck, you might say, as an accident of geography, if they are parties to the suit. But another gentleman, whether he be a Congressman, or a representative in Washington, who is given this information as a courtesy, puts a new light on the subject. The point I wanted to pursue here is whether it does not indicate some need for revision of that practice.

Mr. STYLES. There are some people appearing before this Board who, in order to get a Washington copy, we will say, will enter an appearance for Washington counsel. They are of record, they are on the record hearing, Mr. McCabe, as you as a lawyer understand.

Mr. McCABE. In this case both the A. F. of L. and the CIO might have done so.

Mr. STYLES. Very easily.

Mr. McCABE. The point that Congressman Shafer raised was that the CIO in this instance did not do so, and the practice, as he sees it, prejudiced the A. F. of L. Union.

Mr. STYLES. I do not think it could possibly have had any prejudice on this particular case.

Mr. McCABE. Not on that particular election.

Mr. STYLES. There was no other election involved out there at all.

Mr. McCABE. The basis of his objection is that another election was scheduled for several days later involving the two unions at a different plant, and was prejudiced.

Mr. STYLES. That is one of the imponderables of labor relations. The union used to come into the regional director and say, "We were prejudiced by the fact that so and so happened 6 months ago." We would say, "Well, we are sorry, but after all you filed a petition for election, so that is it."

Mr. ELLIOTT. Will you yield to me?

Mr. McCABE. Yes.

Mr. ELLIOTT. These decisions are not secret, are they, when issued?

Mr. STYLES. It is required that our decisions be made a matter of public record, and they are so made.

Mr. ELLIOTT. The day they are issued or signed or promulgated?

Mr. STYLES. That is right.

Mr. ELLIOTT. And if somebody does not get notice of them at the time he thinks he ought to, the decision is not changed thereby, is it?

Mr. STYLES. It is one of the hard facts of life.

Mr. ELLIOTT. Or one of the hard facts of life. I do not see how in the world—

Mr. STYLES. What happened in this case, Congressman Elliott, is just simply this, that the UAW-CIO had a Washington office and the A. F. of L. moulders' union did not have a Washington office.

Mr. ELLIOTT. Might those decisions have been in the newspaper the same day?

Mr. STYLES. They may very well have been, I don't know.

Mr. ELLIOTT. You cannot be charged with controlling the dissemination of your decisions down there on any basis, can you?

Mr. STYLES. We control that dissemination in important cases by issuing a press release. None was issued in this case. In a routine case we pile them outside of the door of the Information Service Office. The reporters from the AP, UP, New York Times, and everyone else interested in labor cases, come by and pick them up. They are available to the general public as long as they last.

Now, what happens a lot of times, too, is just this. As an old newspaper man, I know what they do. The local paper in Albion might very well alert the AP or UP, whichever one they subscribe to, saying "We are interested in this case. Keep checking with the Board. If you get anything wire us immediately." That happens once in a while.

Mr. McCABE. Congressman Shafer, of course, is not here. He wanted to emphasize particularly the point of this courtesy copy that went to a gentleman who he says was not a representative of record

in the case. He questions the practice, and I wanted to convey his views to you. That is why I interrupted your reading of the letter at that point.

Mr. STYLES. That is all right. [Reading:]

Turning to the charges of unfair labor practice, our records indicate that they were filed by the Moulders A. F. of L., in case No. 7-CB-149, and by the employer in case No. 7-CB-150, on March 20, and April 1, 1953, respectively. This was approximately 2 months after the objections to the election held on January 16 were filed by the molders, and after the regional director's report on objections, dated March 12, was issued. None of the parties excepted to the findings of fact as set forth in the regional director's report. The exceptions filed by the molders ran only to the conclusions of law.

In other words, everybody apparently agreed with the regional director that the facts set forth in his report were correct, the only thing they were arguing about was his application of the law itself.

Although your statement suggests the contrary, the Board's action here was consistent with precedent. You refer to a Board policy to defer action on representation cases while charges are pending. There is such a policy, but your informant omitted to tell you that it does not apply where the charges, as here, are filed after the election. The Board's policy of withholding action in representation cases pending waiver or disposition of unfair labor charges is applicable to charges filed before the conduct of elections. With the exception of charges alleging violation of section 8 (a) (2) or (5), which are not involved here, postelection charges are not material to a ruling on objections, unless the Board determines that the objections have merit. Accordingly, on the basis of the record before it, consisting of the objections, the report on objections and the exceptions thereto (which involved questions of law), the Board found that none of the exceptions raised had merit. The decision was based on well-established or cited precedents.

The cases cited in your statement are distinguishable from the Albion case: In *Local 1031, International Brotherhood of Electrical Workers v. Herzog*, the United States District Court for the District of Columbia dismissed a petition for an injunction, thereby sustaining the Board's position in refusing to certify the IBEW—which had won a consent election because charges partly involving a violation of section 8 (a) (2) were pending against the employer, alleging that the IBEW was company-assisted.

In *Textile Workers Alliance of Magee Carpet Company v. Herzog*, the United States District Court for the District of Columbia, on February 4, 1950, for want of jurisdiction, dismissed a petition for an injunction to compel the issuance of a notice of hearing on a representation petition while charges were already under investigation. (*Magee Carpet Company*, 91 N. L. R. B. 103.)

In *NLRB v. Minnesota Mining and Manufacturing Company* (179 Fed. 2d 323) the Board ordered a hearing on objections to the conduct of an election because it agreed with the regional director that the objections had merit. We consolidated the hearing on objections with the hearing on a complaint based on charges involving sections 8 (a) (1) and (3) filed after the election. The Board's final decision and order set aside the election and found the employer in violation of the act. The United States circuit court of appeals enforced the Board's order and approved consolidation of the cases under the amended act.

The above cases differ on their facts from the Albion case. In them, the charges filed after election either involved allegations of company assistance to the union winning the election, a violation of section 8 (a) (2) of the act, *IBEW v. Herzog*; or, the charges were filed before any election, *T. W. A. v. Herzog*, or the objections were found to have sufficient merit to warrant a hearing (*Minnesota Mining*). In the Albion case, because the regional director found no merit in the objections to the election and the intervenor filed no exceptions to his pertinent findings of fact, the Board ruled on the questions of law raised by the exceptions. Having found that the objections were lacking in merit, Board policy required that the certification issue without awaiting the regional director's disposition of post-election charges of unfair labor practice. Thus we not only did not depart from precedent here, but followed it.

There is a concluding paragraph there, but it has nothing to do with this particular case.

Mr. McCABE. I am puzzled, Mr. Styles, as to how this Minnesota Mining case can be truly distinguished from the situation here. I will admit I have had only your quick reading of it.

Mr. STYLES. The answer there is that we had objections to election that were found to have merit, and we had a C case filed. So, to keep from having two lawsuits running, or imposing on the unions or the employers involved there, we simply consolidated those cases. That is the answer to that.

Mr. McCABE. What puzzles me, and maybe Mr. Bott can help me out on this, is that in the Minnesota Mining case the charges were filed after the election. Is that correct? Or, in any event, they were found to have merit.

Mr. STYLES. Just a second, Mr. McCabe, let me check.

Chairman McCONNELL. The objections were found to have merit.

Mr. BOTT. The objections had merit and, as I read it, the charge had merit.

Mr. STYLES. That is right.

Mr. McCABE. What troubles me, Mr. Bott, is that the charges had merit.

Mr. BOTT. They both were heard together. The objections here were dismissed, as I understand it, and I have not kept up with this case.

Mr. STYLES. Mr. McCabe, maybe I can clear it up.

Mr. McCABE. Let me follow through with my question, to see if I have the situation in mind.

The election was held, objections were filed and they were dismissed. Then charges were filed. That is in the Albion case.

In the Minnesota Mining case you had charges filed which were found to have merit.

In the Albion case certification was issued while the investigation of charges was still pending. So, how could you know the charges did not have merit until the investigation was completed? As I understand the operation of the General Counsel, and the field operations generally, when a charge is filed the investigation is begun and other matters may be uncovered which may support the original charge, or which may aid in its dismissal.

What troubles me here is that I do not understand how you can determine that charges made in the Albion case have no merit until your investigation is finished. Certification was made in the face of those pending charges. Certification was made in April and the charges were dismissed last night. That puzzles me. Or am I off base?

Chairman McCONNELL. It makes sense to me, Mr. McCabe. I am waiting to hear this answer.

Mr. STYLES. Mr. McCabe, in this case the real difference is that the objections in this case had no merit. They were found to be without merit. In the Minnesota Mining case they were found to be with merit. They were meritorious objections, they were such that it would require additional formal investigation, and the hearing was ordered. In this case, as I understand it, the charges which were filed subsequent to the election and subsequent to the ruling on objections were

merely a reiteration of the objections themselves, which, as indicated, were found to be lacking in merit.

Mr. McCABE. But there was an active investigation of these charges. They were still pending, and they were not dismissed until 3 weeks after the certification was issued. That is the inconsistency I see in the matter. True enough, you dismissed the objections to the election. But if Mr. Bott's field personnel investigating the charges found them to be meritorious it would have given you a case on all fours with Minnesota Mining. That is the thing I do not follow here. I do not see how this certification could have been issued while there was an investigation pending on charges which might have called for setting it aside.

Mr. STYLES. The point there is that no one involved objected to the regional director's findings of fact in the report on the objections to the election. The Board had before it a pure question of law only.

Mr. McCABE. I do not think that is quite the point, Mr. Styles. It is true no one objected to the regional director's handling of objections to the election. But there were objections to the whole situation, you might say, when the unfair labor practice charges were filed by both the company and the union. And that is the point that annoys me here. I am not concerned with the failure to object to his findings. I am concerned with the issuance of the certification while these charges were being investigated. That investigation might well have developed information to deny the certification. I do not see how you could know there was no merit to the charges until the General Counsel's field personnel investigated fully and then dismissed them. That is the inconsistency.

Mr. METCALF. May I ask a question?

Chairman MCCONNELL. Yes, Mr. Metcalf.

Mr. METCALF. As I understand it, the second charges filed were, in substance, the same ones that had been previously filed and found to be without merit.

Mr. STYLES. The allegations contained in the charges that were filed by the employer and the intervening union, Congressman, as I understand it, were merely a reiteration of the charges contained in the objections case. I am not sure of those facts.

Chairman MCCONNELL. Why did they not dismiss the charges and then certify?

Mr. STYLES. Mr. Chairman, may I point out for the benefit of the committee that the authority of the agency is divided by the act, and I do not say that in a spirit of levity. I want you to understand that we go by that statutory division. The General Counsel and his regional offices are none of the Board's business. What he does with those charges are his business alone by statute. What he did about those charges he will himself be perfectly capable of answering. The Board, though, was not confronted with the charges. We had no charges before us. We had only objections to an election on which, Mr. Chairman, no one disputed the facts. They said the regional director had misapplied the law. In that sort of a situation we do not order a hearing, we sit down and say, "Well, what do we think the law is?" And on the basis of those facts we apply the law as we see it. That is just what we did here.

Chairman MCCONNELL. In short, when charges are pending you at times certify; is that it?

Mr. STYLES. It depends on the circumstances of the case. We try to use the amount of flexibility that we think Congress intended us to use.

Chairman McCONNELL. It is not very clear to me.

Mr. Smith?

Mr. SMITH. I think these are the facts. The question before us is: a one-vote majority for the CIO. That is correct, is it not?

Mr. STYLES. I could not really answer that question. I don't know what the final vote was.

Mr. SMITH. A one-vote majority.

Mr. STYLES. That may very well be.

Mr. SMITH. And then here comes the charges that they dismiss and do not investigate: (1) Buying votes with beer and whisky; (2) threats against the employees and intimidation; (3) fraud, misrepresentation, and unreasonable promise of benefits.

Those are the charges, and in view of those with the one-vote decision for the CIO you just say, "We will stand on our record." That is your case.

Mr. STYLES. Congressman, those were the objections to the election, that is true, sir. The regional director investigated those charges, and in his report on objections, his finding of fact were not challenged, the facts in that report were not challenged. The objections were found without merit both by the regional office and by the Board, and neither party objected to it, Congressman. If the regional director's statement was not a true statement of the facts somebody ought to have come forward and have said to the Board and everybody else that the report was not so.

Chairman McCONNELL. Mr. Styles, why would you not dismiss them and then come out with your final decision?

Mr. STYLES. Why wouldn't we dismiss what? The charges?

Chairman McCONNELL. The charges, or whatever it was that was still pending.

Mr. STYLES. The Board cannot issue a complaint, and it cannot dismiss a complaint until after a hearing and review of an intermediate report. There had been no hearing here, and I cannot tell you why the General Counsel dismissed those charges. As I said, he will have to answer that.

Chairman McCONNELL. Let him answer it. I do not understand this thing yet.

Mr. BORT. I will answer what I can. I do not know too much about this case, as I say. I knew it was becoming controversial, but I was preparing the other material.

The charges were not dismissed because we were investigating. That sounds trite, but that is what we were doing. Apparently they were dismissed today or yesterday because of no merit. I have heard here, and I do know, that the charges on their face were the same as the objections the union and the company made to the election. Those did not have any merit by findings, and it is not surprising that the charges turned out to be the same, and they were dismissed. But why we did not dismiss them sooner I cannot say, or why the Board certified at that time I cannot say. I did not know anything about that representation case. But we did investigate the charges, and even though the same people had investigated the objections, they went on

and looked at them over again and they have dismissed them. So I think the only distinguishing factor that I can see is that the charges were filed so late after an election had been held, and they were based upon the same set of facts, the same transaction which gave rise to the objections, and the objections were not any good, and they just went ahead and finished the case.

I will be glad to, and you may want me to, get you a report on my side of the handling of the case. I would be glad to do it on this one. I have to plead ignorance on the actual facts.

Mr. McCABE. Let us put it this way: This case has been discussed on the floor of the House and has been presented to this committee by Congressman Shafer, who feels very strongly about it. I am not at this point questioning the reasons why these charges were dismissed. Assume that there was nothing to them. The thing that troubles me, Mr. Styles, is why the certification was issued while the investigation was going on. The Board has held—and the courts have supported—that when a charge is filed and then investigated, any additional facts found in the investigation may be included in a complaint that might issue.

Now, suppose in this investigation, even though the charges on their face were the same as the election objections, the investigators found evidence that there was merit to the charges. Then what would have happened? What worries me is the issuance of the certification while this investigation was going on, even though the charges were precisely the same as the original objections to the election. It is the fact that the investigation might have uncovered further information that leads me to question whether this case is really distinguishable from the Minnesota Mining case, which your chairman cited. That is the issue. I do not want to question the election at this point. I do not question at this point the propriety of dismissing the charges. I am puzzled over issuing the certification while the charges were pending, since it is possible—perhaps improbable—but nevertheless possible, that the investigation would uncover information on which the certification would be set aside.

Chairman McCONNELL. You see, Mr. Styles, you assumed that that investigation would disclose the charges to be of a certain nature.

Mr. STYLES. No, Mr. McConnell, that is not the case. I do not think I have made myself quite clear to the committee. I would like to point out, if I may, and give you this exchange of letters, and then I will get another one and read from it so that you will know what I am reading from.

Mr. McCABE. I have it.

Mr. STYLES. If you will look on the last paragraph of the second page of Mr. Herzog's letter to Congressman Shafer, where he points out the Board's policy of withholding action in representation cases pending waiver of or disposition of unfair labor practice charges being applicable only to charges filed before the conduct of elections, and with the exception of charges alleging violation of section 8 (a) (2) or (5), which are not involved here, that postelection charges are not material to a ruling on objections unless the Board determines that the objections have merit. That is our rule all the time.

Now, the reason for that, of course, is just this: If there is an 8 (a) (2) charge filed we must look very promptly into it for the simple reason that somebody is saying that the union that won the election

is a creature of the company, and it is not entitled to be certified here as a representative of the people.

Or in an 8 (a) (5), somebody is saying that union should not have been allowed to win an election, or no election should have been held really because "We are the bargaining representative and that company is under a statutory duty to recognize and bargain with us." No other postelection charges are relevant to the election.

Mr. McCABE. Suppose Mr. Bott's investigation had determined there was an 8 (a) (2) violation, and that this union——

Mr. STYLES. There was none alleged. These were 8 (b) charges against the union. No charges were made against the employer under section 8 (a).

Mr. McCABE. Let us assume it. There was none in the charge, that is true, but the investigation might uncover it. Suppose the investigation uncovered that fact? Then where would you be?

Mr. STYLES. We can set the certification aside, Mr. McCabe. We would have pulled a boner.

Mr. McCABE. That is precisely the point.

Mr. BOTT. You might and you might not, Mr McCabe. The General Counsel might not issue a complaint if the matters alleged in the charge were based upon objections, for example, that had been overruled, or based upon incidents which had not been alleged as objections but came up after the election or after the certification. You have to have some end.

Mr. McCABE. Yes, that is possible.

Mr. BOTT. I have that problem right now.

Mr. McCABE. Assume on this question of Mr. Styles, that the investigation disclosed information on which an 8 (a) (2) complaint would have been issued——

Mr. BOTT. We might very well dismiss it on policy grounds, if we uncovered something in a charge later on that should have been brought up as an objection and was not. We have got that problem. We might have to have a policy on it because if you do not you are going to give the union a way to get around that objection filing time.

Mr. McCABE. I realize that you have to police these things. I am only concerned with the fact that it is a possibility here, is it not——

Mr. BOTT. Yes, surely.

Mr. McCABE. —that the certification would have to be set aside. Should your investigation have developed facts to show this certification should not have been issued, then where would you be? That is the point Congressman Shafer is driving at. That is why he questions the issuance of certification while this investigation was going on. He wonders why the rush?

Mr. STYLES. Well, there was no rush. Now, we adopted this procedure to stop the very thing Mr. Bott talked about. In other words, to keep dissident unions, those who had lost an election, from holding up certification of the successful union so that that would not allow collective bargaining to go on. The company would be caught in a vise on that sort of a situation, as you can well imagine.

So, we said that where the objections have no merit and the charges do not relate to the election itself, in such a case we will go ahead and we will certify.

In this particular case it turned out that when we dismissed the objections upon the regional director's recommendation to the Board,

no one had argued with him, everybody admitted his facts, but they said he applied the law wrong. Then after they had been turned down by the regional director, they turned around and filed their charges.

Mr. KERSTEN. How does the Board determine that the objections have no merit?

Mr. STYLES. On the record, Congressman, as a whole.

Mr. KERSTEN. In other words, where the subsequent objections are filed you relate them back to the record?

Mr. STYLES. You relate them back to everything in the case. In this particular case there was no challenge of the record, we will say, because everybody, or, rather, no one challenged the regional director's findings of fact which would be the record in this particular instance. He made his report in which he found the following facts to be there, and on those facts he based his conclusions of law as being thus and so, and recommended that the Board certify. That the Board did. The only thing they objected to, the people who filed the objections, the employer, I think, and in this case also the intervening union, was his application of the law, not to the facts as he found and reported them to be.

Mr. McCABE. Had you finished, Mr. Kersten?

Mr. KERSTEN. I am finished.

Mr. McCABE. We keep coming back to these unfair labor practice charges. I would like to ask you whether you think there is an inconsistency with the discussion on decertification you had with Congressman Wainwright. In the earlier case cited, which Speaker Martin referred to the committee, the decertification petition was not entertained because of the pendency of unfair labor practice charges. Presumably, it is the general practice not to hold an election or issue a certification while unfair practice charges are pending.

Mr. STYLES. On the sound theory that you cannot hold a fair election while somebody is beating the other side over the head. That is the theory we have gone on for years. I do not know the facts in that case. I do not know why—

Mr. McCABE. I do not ask the question with that in mind. I realize we do not know the facts there. It does bring to mind the decertification situation. I think there is an inconsistency.

Mr. STYLES. I do not see an inconsistency. The election in Albion had already been conducted prior to charges being filed.

Mr. McCABE. What about the rush?

Mr. STYLES. As far as the rush is concerned, that election was held in December, perhaps in January. Congressman Shafer first wrote us on the 26th or the 25th.

Mr. McCABE. I will not belabor the point further.

Mr. STYLES. We did not act until the last of April, as I remember it.

Mr. McCABE. Certification was issued late in April. The charges were dismissed yesterday, May 7, more than 2 weeks after issuance of the certification. I wonder if it was wise, and Congressman Shafer wonders, too, to certify a union in view of the fact that those charges were pending, when there is only a matter of less than 3 weeks.

That is all I have on that, Mr. Chairman.

Mr. STYLES. I think, for the benefit of the committee's record, I might offer to the committee the exchange of correspondence, all of it,

involved in this case, where we have been writing to Congressman Shafer, and perhaps it will help you in your deliberations.

Chairman McCONNELL. We will let that go without putting any more in the record at this time.

I am wondering if we can see a conclusion anywhere in sight, of today's hearings. The thought I have in mind is this: That we take a recess for 5 minutes, and take a seventh-inning stretch and then continue, because I am quite determined to finish these hearings as of May 8.

Mr. WAINWRIGHT. I have only three brief points to bring up, and that is all I have.

Chairman McCONNELL. Do you think we could finish in about an hour more?

Mr. WAINWRIGHT. I will not be over 5 minutes.

Chairman McCONNELL. Then we will recess for 5 minutes and resume until we are through.

(Whereupon, a short recess was taken.)

Chairman McCONNELL. The hearings will reconvene.

Mr. Wainwright, you have a matter to bring up?

Mr. WAINWRIGHT. Yes; I have three points I wanted to make. I wanted to state to Mr. Bott that I thought the letter that went out to your staff throughout the country was a very good letter and a very fair letter. I am inclined to feel, however, that it was several years too late, possibly 6. That the will of the American people was profoundly expressed at that time and by the succeeding Congresses of not overruling the act under discussion was quite clear evidence that its interpretation by the Board should have conformed with the philosophy that was expressed in the hearings at the time, which I have read and which you undoubtedly read and participated in.

I think you put your finger on it when you said that the question of labor is extremely controversial. It is very difficult after sitting here for 3 months to try each day to remain impartial and approach it with a nonpartisan view. I think that, however, it is the feeling of the committee that the letter that you had there should have gone out many years sooner, and that the testimony we have heard has given a fairly clear indication that a preference has lain on a certain side.

I just wanted to make those remarks, and if you want to comment on them, go ahead before I go into the two other points.

Mr. Bott. I do not have any comment.

Mr. WAINWRIGHT. I wanted to call to your attention the testimony on April 24 which you probably read because you have gone through most of this.

The testimony was given by a man by the name of Gilbert from Oakdale, Calif. I am quoting from the testimony. He says:

On July 17 the union filed an unfair labor practice against us with the NLRB. A field examiner by the name of Albert Schneider was assigned to investigate the case, and it was at this point that my real experience began. After Mr. Schneider had contacted the local officials of the union and had completed his investigation in Oakdale I was summoned to appear before him at the office of the NLRB in San Francisco.

In response to this request I appeared before him on September 11, 1952, with Mr. Caldwell of the California Association of Employers. For several hours I was forced to answer leading questions by Mr. Schneider and it was evident from his questions that he was attempting to build a case for the union. It was necessary during this conference with Mr. Schneider for Mr.

Caldwell to reprimand him for his method of questioning, and Mr. Caldwell informed him at that time that unless he was willing to act like a gentleman and conduct himself in an orderly manner we would request the regional director, Gerald Brown, to remove him from the case. As evidence of his bias he stated at one point that he personally would amend the charges so that they "would stick."

All during this conference Mr. Schneider was taking notes on a scratch pad and when he had finished talking to us he turned his note pad to me and said, "Here is what you have said, now sign it." I noticed it was a deposition and that it contained many statements, many statements which were not true. I did not sign it. I informed him at that time that if he wanted an affidavit from me I would take his notes and correct them and submit them in affidavit form. This Mr. Schneider would not allow me to do. Later I did prepare an affidavit which contained the truth. However, Mr. Schneider's original statement, written in longhand, was presented on February 2, 1953, in the record of the hearing by NLRB attorney, Mr. Scolnik, as General Counsel's exhibit No. 5. The details of this submission are contained in the transcript of the hearing on pages 400 to 407.

I think that this testimony, and I am assuming it is true—we have had nothing to the contrary, and if you have something to the contrary on it, certainly I would like to hear about it.

Mr. BOTT. I have it, and it is in the exhibits which Mr. McConnell permitted us to put in the record.

Mr. WAINWRIGHT. Referring to this particular testimony?

Mr. BOTT. Yes, sir.

Mr. WAINWRIGHT. And refuting this charge?

Mr. BOTT. I think throwing a different light on it. I would like to say refuting it, but I do not want to make the gap too wide.

Mr. WAINWRIGHT. That certainly would save any further prolongation of it.

Mr. BOTT. All those things you mentioned are in our statement.

Mr. WAINWRIGHT. Then let us take this as a hypothetical case. Assuming it is true, would you think it was wrong?

Mr. BOTT. Absolutely.

Mr. RINGER. When it comes my turn I will point out that there is an error with respect to the admission in evidence, as Mr. Gilbert indicated.

Mr. WAINWRIGHT. Entering the longhand affidavit?

Mr. RINGER. That is right. The longhand affidavit that was never signed was rejected by the trial examiner. I just mention that.

Mr. WAINWRIGHT. I am merely bringing that up as a form of conduct which you, as a representative of the Government, would not wish your employees to follow.

Mr. BOTT. Certainly, if it were true, certainly not. I repeat that, that is just wrong. That is the kind of thing that would just keep making our reputation bad, and we certainly do not want it.

Mr. WAINWRIGHT. Apparently somebody is a liar.

The only other point I wanted to call to your attention is when we were discussing evidence earlier, Mr. Barden was discussing evidence, I had the *Stewart-Warner Corporation* case (28 L. R. R. M. 1075), called to my attention. I will read you the headnote, only the headnote, in question, because you cannot get the facts from the decision I have here before me.

On page 1077, under the subheading "Evidence" (sec. 10 (b)) :

The trial examiner's failure to permit an employer to question witnesses with respect to their alleged Communist Party membership was not prejudicial error, since the trial examiner stated that he would have credited these witnesses, even

assuming that they were Communists, and since no reason appears for disturbing the trial examiner's credibility findings.

Now, as a matter of policy, how do you feel about opposing counsel questioning a supposed Communist as to his Communist affiliations if it has a bearing on the case?

Mr. BOTT. I do not know the Stewart-Warner case. This is where the trial examiner overruled an objection, or sustained it?

Mr. WAINWRIGHT. Sustained the objection.

Mr. BOTT. Sustained the objection?

Mr. WAINWRIGHT. Yes.

Mr. BOTT. That used to be the practice, the general practice, not to permit the question: "Are you a member of the Communist Party?" to a dischargée on the question of credibility. I do not know whether that is the practice today. I would be inclined to think that the question was relevant.

Mr. WAINWRIGHT. That is a 1951 case, May of 1951.

Mr. BOTT. I would be personally inclined to think that the question is relevant. I would want to stop if he admitted it. I think—

Mr. WAINWRIGHT. I think that is a very important statement from you because it establishes, or I hope it would establish a policy throughout the various labor combats that are going on throughout the country between the Board and, say, management counsel, that when management counsel asks such a question, from your reply I would understand, then, that your representatives should not then object.

Mr. BOTT. I would think so. I would want to look it over. But I would be willing to say that, as a trial lawyer or ex-trial lawyer, I would want to know how far we ought to permit them to go on the long extensive cross-examination about organizations and so on because we might not ever get through with the hearing. But, certainly, I will go that far, to say that the question "Are you a member of the Communist Party?" I do not think that should be objected to.

Mr. WAINWRIGHT. Do you remember the previous headnote, which may refresh your recollection on this case was: "Employer cannot defend its unlawful support of the IBEW because of its desire to rid the plant of communism."

I think also that philosophy has changed today.

Mr. BOTT. It would depend on the context. I think that was a UE—

Mr. WAINWRIGHT. That is right.

Mr. BOTT. IBEW case. I think, generally speaking, the employer first said, "I did not help the IBEW, but if I did I told the employees they should join it because I wanted to get rid of the UE."

Mr. WAINWRIGHT. I do not know the facts.

Mr. BOTT. I think certainly on the question of free speech—I am sort of extemporizing on employer statements—I think that his motives in that case would certainly be proper, and it would be permissible for him to make that sort of a speech. Whether or not, as the law stands, the 9 (h) affidavit and so on, an employer could justify an unfair labor practice, in other words, helping another union get into the plant, let us say, putting it baldly, starting a company union in order to get rid of the UE, that is questionable in my mind. I would like to think of it. I think probably he cannot, and that his motives in that case are not relevant as the law is written, because if that union

has its affidavits on file I do not think it would be a good defense for an employer to say "I started a company union or I gave a boost or some help to the other union because I wanted to get rid of this union." I think he would be charged with an unfair labor practice.

Mr. WAINWRIGHT. Not to get rid of this union, but get rid of the union because it contains either Communist leadership or Communists within the union.

Mr. BOTT. I think we would just have to wrestle with it. I have had this before on the problem of a refusal to bargain with a certified left-wing union. And in the hearings on communism, or section 9 (h) in the last Congress before the Senate, we were asked: "If an employer refused to bargain with a union because he thought it was a security risk, what would you do?" I think we said we did not know, that we would give great weight to it.

I would consider it, personally as General Counsel, in making up my mind whether to issue a complaint. I do not know what I would do because of the law. I do not know whether his motive would be a defense. Perhaps it would not. It might be a lawsuit for us today. In other words, to test it, to see whether he has to bargain. But we have to take into consideration that the way the statute is written Congress tried to meet the Communist problem through the 9 (h) provision that you have to file your affidavits, and that is all you have to do. And to permit the evidence of motive and so on might—

Mr. WAINWRIGHT. You are getting down to the point that will ultimately come out, that 9 (h) has not been a screaming success as such.

Mr. BOTT. That is right.

Mr. WAINWRIGHT. But a policy determination by the Board that a bona-fide attempt by an employer to rid his union of communism, or his union of Communist domination would not, as apparently occurred in 1951, be the basis for an unfair labor situation?

Mr. BOTT. I think we should take it into consideration more than we perhaps did in 1951. I think that is about as far as I want to go. And then I would make the value judgment as to whether we should issue a complaint or not. I would say this, that we have dismissed cases, as you know, and I think, as has been brought out here, where the employer fires individuals because they were Communists. And I only raise that—I though it was evident—because some people have said you cannot fire a man because he is a Communist. I have told employers that is nonsense, of course. If they want to do that, and if they act in good faith and with the proper motive, of course they can. And they have, those cases have been dismissed by our office.

There is a well-known case—I do not want to take your time—where I refused to issue a complaint because an employer fired a Communist at the request of a union, and my critics thought I was bringing the closed shop back into the law, contrary to the spirit of the Taft-Hartley law, because the union had made the request, the union had expelled them, and that has been a very controversial case. I restricted it to its own facts, where the union expelled a man in good faith—

Mr. WAINWRIGHT. In other words, that was not a policy determination?

Mr. BOTT. It was a policy determination in that particular case; yes. And that is as far as I have been able to go. On the question that you are raising of refusal to bargain in good faith attempts to supplant a left-wing union with a good union—

Mr. WAINWRIGHT. I do not say a left-wing union, I say a union that is, under reasonable interpretation, dominated by Communists or such members, we will say, of the Young Communist League, or so far off to the left that although they may not be card-carrying members of the party they would be considered Communists.

Mr. BOTT. The thing that worries me is the statutory structure as we have it, which indicated a specific, precise congressional approach to the problem of communism through 9 (h). And the way it is written indicated that we were not to go into collateral issues about whether or not the union was a Communist union or not. Although I feel confident that I would give some weight to it, it would be a tough problem because we might be strapped or boxed by the statute as written.

I think when I testified a year or more ago before Senator Humphrey on atomic energy and defense they wanted to know if the War Department wrote us or told us not to permit a union on the ballot, or not to issue a complaint, what would we do. I said it was hypothetical, they had not done that, and I did not know what we would do, but personally at that time I felt it would be a lawsuit. In other words, I would have to issue a complaint. What the Board would do I had no way of knowing. And it might have to be litigated in the court. That does not seem like it makes good sense, even then or now. We have all discussed 9(h) and you have had all the testimony you can stand on it. You have got testimony that some other method has to be found. The Subversive Activities Control Board type of thing seems to be the best thing we can come up with. It has its defects, some defects, but I do not want to throw cold water on it, and what I am doing is emphasizing the fact that we have to take the law as written, and may have to make a decision under a government-of-laws type of technique.

Mr. WAINWRIGHT. I think, however, that if you and the Board, within the framework of the hypothetical structure we have been talking about, took the positive stand instead of a negative stand and heaved the Communists out or denied an unfair labor charge in a particular instance, and the suit was then brought in that way rather than by management, I think it would be more socially acceptable in the light of the times.

Mr. BOTT. The difficulty is between what is socially acceptable and what is in the statute.

Mr. WAINWRIGHT. In maybe the late thirties the reverse would have been true.

I am all through, Mr. Chairman.

Mr. McCABE. Mr. Chairman?

Chairman McCONNELL. Yes, Mr. McCabe.

Mr. McCABE. Mr. Bott, are you not really going into the collateral issue of communism in those cases where you permit a noncomplying union to intervene? You may recall that when you were here before, you and I had a rather lengthy discussion on this matter—the intervention of noncomplying unions, permitting them to raise the con-

tract bar. Well, as you talked with Congressman Wainwright I was impressed by your comment that Congress had given 9 (h), the non-Communist affidavit, as its best guide.

Now, along comes the noncomplying union. You and I discussed at some length whether it could be suspect or could be considered as nonsuspect.

I wonder what you think about this: Are you not really making a determination that a noncomplying union, regardless of its reason, is not suspect? And are you not, to that extent, going into the collateral issue of communists when you permit a noncomplying union to raise the contract bar?

Mr. BOTT. You are weighing two values I suppose you are making some sort of an inchoate or subconscious judgment that they are not suspect, particularly in view of the fact that all suspect unions are complying unions.

Mr. McCABE. There are some, like the mine workers, who are out of compliance because they do not like the law and do not want to have anything to do with the act or the Board.

First of all, this contract bar rule is a rule that the Board made itself. The Second Circuit just a few days ago said the Board could administer that rule in any way it saw fit. It was in the Board's complete discretion. In other words, there is nothing in the statute about a union raising the contract bar.

Mr. BOTT. I do not think we could administer it in any way we saw fit.

Mr. McCABE. I do not mean to imply that.

Mr. BOTT. I mean setting it aside for the purpose of an election, if it had a substantial period of time to run or a long time, or doing it without a hearing or without permitting intervention. I think there would be a good chance of a court enjoining us or setting our election aside, if we kept a noncomplying union out from the hearing for the purpose of testing whether or not its contract were valid. It is a property right.

The thing that sticks in my mind mainly, though, and I will finish, is that as I remember the legislative history—and the legislative history is always tied up in your mind with all of the discussion of the Taft-Hartley law by the experts and the labor people and the employers around that 6-month period—I thought the consensus was to sustain the constitutionality, particularly of 9 (h), that we were not taking any rights away, that you do not have to use the Labor Board facilities. All we are doing is making it impossible for you to use the Labor Board facilities.

So, those unions said they do not have to comply, they are not going to use the Labor Board. It is the other union which is using the Labor Board in the case you mentioned, and they are trying to take over the employees from the United Mine Workers or the typographical union, and so on. That union comes in and says, "Look, we do not have to go to the Labor Board to get certified, or use any of its processes, but nobody said we could not sign contracts."

And the legislative history does not indicate that they could not.

"All that we want to do is to show that we have a reasonable contract here and you should not upset it for a time."

And, as I said to you before, I was not there, but I think we thought institutionally that we would run a risk of knocking that union out

of the hearing because of its property right in the contract. So it was decided to let them intervene on the contract issue only.

But I recall now that we did go pretty far where we said that they could not appear on the ballot in any kind of a proceeding, even to get the arithmetical results. We would not recognize them for that, and they could not appear to file objections to elections, even though they were the incumbent union.

In other words, we went up to this point about the intervention, and that is where we stopped.

Mr. McCABE. There is nothing in the law which requires a contract between an employer and a union. There is nothing in the law which relates to the Board's permitting the contract bar to be asserted. Along comes a noncomplying union, and it may be a Communist-dominated, noncomplying union, or it may not be. Yet it is permitted in the interest of stability in labor relations to raise this contract bar. Under present practice it could insulate itself for 5 years in a given situation. That is a rule the Board made itself. I wonder if it might not have been better to insist flatly on using the guide which Congress gave in 9 (h) in these contract bar situations, and simply forbid a noncomplying union to raise the bar—

Mr. BOTT. Mr. McCabe, I want to be helpful, but sometimes I guess I ought to learn to keep my mouth shut. I did not make the law on contract bars, and I have no authority under the statute to interpret it at all. It is purely a matter for the Board. And if they have any comments they perhaps should make them. I am trying to be helpful, but I have not thought of the doctrine, and I have authority on unfair labor practices only. I follow decisions and Board policies in representation cases because I have to under the law.

Mr. McCABE. Have you tested that? I ask it of you because in the initial stages your field personnel do handle the election matters and that point comes up.

Mr. BOTT. They have the practical experience.

Mr. KERSTEN. May I ask a question?

Chairman McCONNELL. Mr. Kersten.

Mr. KERSTEN. I would like to ask this one hypothetical question: Supposing a union had been certified, and by some manner or means the real facts were not apparent in time, and that after it was certified you found out, as counsel, that the leadership of the union was completely a group of management spies who were determined to work to the detriment of the employees, to destroy ultimately the union. Supposing you had very substantial evidence that came to your attention that the entire leadership of that union was a bunch of management spies. What, if anything, do you think might be done about that situation?

Mr. BOTT. Well, I do not think much could be done without a charge filed by somebody. Let's get an employee—

Mr. KERSTEN. Would you just sit back and do nothing about it?

Mr. BOTT. I don't think so.

Mr. KERSTEN. What would you do?

Mr. BOTT. I don't know, but I don't—

Mr. KERSTEN. I realize you would have to draw on off-the-cuff imaginative action, but what could be done in a situation like that? Here the entire leadership of this particular union, the president, secretary-treasurer, and business agent, and everybody else turned

out to be a conspiracy on the part of management, they were all management spies who were determined to destroy that union. Suppose that came to your attention, very substantial evidence to that effect?

Mr. BOTT. I think somebody ought to file a charge that it is a company union, some employee who—

Mr. KERSTEN. Would your office be kind of neutral about that? Would you sit back and do nothing about it, would you say?

Mr. BOTT. You mean neutral if no one actually forced it?

Mr. KERSTEN. Yes.

Mr. BOTT. Or filed a charge? If I knew about it from reading in the newspapers, or if I had real personal knowledge—

Mr. KERSTEN. Real personal knowledge, very substantial evidence to the effect that this was a bunch of company thugs and spies hired to destroy the union.

Mr. BOTT. I do not know what I could do under the statute as written, which says, "Whenever it is charged," then your prosecution—

Mr. KERSTEN. In much of the testimony that has gone through here it seems that some of the representatives of the Board or of the General Counsel's office have more or less followed their intuition and tried to develop evidence which they believed would ultimately bring justice.

Mr. BOTT. They have a charge, though, started by somebody, some individual—

Mr. KERSTEN. Can you sit back and see that union destroyed?

Mr. BOTT. I might have to because we cannot act as policemen. In other words, we do not arrest them because they are on our beat. Someone has to file a complaint or a charge. That is the history of the law. It says, "Whenever it is charged" and the courts have held that a charge is jurisdictional. It comes back to me now. We could not legally operate without a charge. I cannot initiate an indictment or an information or anything like that.

Mr. KERSTEN. Supposing in a situation like that any member of the union made a charge to that effect? Then you would act, is that right?

Mr. BOTT. Yes, and we have acted, you know, in analogous cases.

Mr. KERSTEN. In the case of the union that has been certified, if an individual member made a charge that that union was Communist-dominated, could you do anything about that?

Mr. BOTT. Under 9 (h) I think not; no. It is not an unfair labor practice today to be a Communist-dominated union.

Mr. KERSTEN. It isn't?

Mr. BOTT. No. That is what I understand the bills introduced here propose to cure.

Mr. KERSTEN. All right; that is all.

Mr. METCALF. May I ask one more question?

Chairman McCONNELL. Yes, Mr. Metcalf.

Mr. METCALF. Suppose you had a union certified under 9 (h) and the Department of Justice prosecuted one of those officers of that union and convicted him for perjury in signing such an affidavit. Then what would you do?

Mr. BOTT. The Board would revoke the certification of the union.

Mr. METCALF. You would immediately decertify it?

Mr. BOTT. Yes, and the Board has done that in at least one case.

Mr. METCALF. That is all.

Chairman McCONNELL. Are there any other questions?

Mr. ELLIOTT. Mr. Chairman, before these hearings finally close I want to direct your attention to page 1947, part 6, of the printed hearings. There is a statement on page 1947 which is erroneously attributed to me. I did not make the statement. The statement was made by our colleague, the gentleman from Georgia, Mr. Landrum. He and I have discussed it and are in agreement that it is his statement.

I want the record to show that.

Mr. RINGER. Mr. Chairman, I am here as chief trial examiner with respect to the matters that have been referred to in the transcript of the hearing you have had concerning the conduct of trial examiners, and I have a written statement, and I have two statements from trial examiners who felt they wished to present them to the committee.

I am available for any questions with respect to any of the matters that have been referred to, to the extent that the committee wants to ask me. I do not know what the wishes of the committee are in that respect.

Chairman McCONNELL. What type of statement do you refer to by trial examiners? I thought we had given every person whose name was mentioned an opportunity to reply. Is it a short one?

Mr. RINGER. That is what these two are. I am referring to the letter I received from you.

Chairman McCONNELL. Oh, yes. I thought you were introducing something else.

Yes, that will be received into the record.

Mr. RINGER. I do have explanations from reading the transcripts yesterday with respect to matters that have been brought out, and instances I would be glad to talk about. I think the charges are shown to have been a misunderstanding or a distortion of what occurred at the hearing with the trial examiner in the particular unfair-labor-practice case.

Now, if you would permit me, I would read this very short statement and offer the 2 statements furnished by 2 of the trial examiners named in the hearing.

Chairman McCONNELL. It is received into the record. Will that not be sufficient?

Mr. RINGER. Certainly it will be sufficient. I have no desire to carry this hearing any further except I do want the record to contain this material.

Chairman McCONNELL. Without objection, that is agreeable.

Mr. RINGER. I will furnish them to the reporter.

Chairman McCONNELL. Yes, if you have statements there we will receive them.

(The statements referred to are as follows:)

PREPARED STATEMENT OF WILLIAM R RINGER, CHIEF TRIAL EXAMINER, NATIONAL
LABOR RELATIONS BOARD

The committee has courteously extended permission to several trial examiners¹ to file statements with the committee. Several witnesses, during the course of their testimony, had mentioned these examiners² in respect to certain cases that

¹ Howard Myers, Martin Bennett, Herman Marx, Sidney Lindner, and George Downing

² Although Trial Examiner Downing was among those mentioned, no criticism of him was made. Another trial examiner mentioned at the hearings was Robert Piper.

have been criticized. All of these cases are awaiting either Board or circuit court consideration, and in at least one instance the trial examiner has not yet issued his intermediate report. The criticism for the most part dealt with the fact findings of the examiner, involving resolution of conflicts in testimony.

Unfair-labor-practice proceedings conducted by trial examiners are adversary actions, and almost all such cases involve sharp factual disputes. The parties in these cases present supporting testimony and other evidence for their respective positions, and it is the examiners' function to resolve these conflicts upon a consideration of the entire record and with regard to the demeanor of each witness. As the second circuit recently observed: "True, demeanor evidence may sometimes mislead, but our courts regard it nevertheless as an excellent clue to the trustworthiness of testimony. The Federal civil procedural rules reflect this view."²

Factual conflicts are characteristic of NLRB proceedings and arise from their very nature. The problems in labor relations are essentially those of human relationship. Conflict in this field, more than in others, produces aroused emotion and extreme partisanship. Assertions and denials of fact are firm and vigorous, sometimes almost violent. From an atmosphere highly charged with conviction on both sides, the NLRB trial examiner, a fallible human being, must attempt, objectively and expertly as possible, to resolve the differences among fallible and partisan witnesses. It is understandable, therefore, that out of the thousands of litigants who have appeared before our trial examiners in the past few years there would be a few to use the forum of this committee to express their disappointment. I am sure that the lawyer members of this committee are familiar with those litigants who, faced with an adverse decision, become over-critical of a trial judge and on appeal seek to try him instead of the merits or demerits of their cause.

While appreciative of the opportunity afforded examiners to respond, nevertheless, we are troubled by a delicate and perhaps fundamental problem. Is it proper for a trial examiner bound by the statutory scheme of agency and court review provided by the Administrative Procedure Act and the Taft-Hartley Act to file a statement with this committee explaining, and to enter into a controversy concerning, the processes of decision making, particularly where the case in question is yet open for further administrative and/or judicial action? We think not. The cases are firmly settled that it is not even the function of a court to probe the mental processes of an administrative officer.⁴

It is respectfully suggested, therefore, that the questioned action of each of the examiners can best be evaluated in the light of the entire record of the cases mentioned, and the Board would be pleased to make such complete transcripts and the intermediate reports based thereon available to the committee for such use. Needless to say in this connection, "Trial examiners and members of administrative boards—and judges—are all human, and it is unreasonable to demand that any human process be absolutely flawless. The workaday world is no place for the perfectionist" *N. L. R. B. v. Air Associates, Inc.* (121 F. 2d, 586, 590 (C. A. 2)).

(The letters referred to follow:)

NATIONAL LABOR RELATIONS BOARD,
San Francisco, Calif., May 5, 1953.

Mr. WILLIAM R. RINGER,
Chief Trial Examiner,
National Labor Relations Board, Washington, D. C.

DEAR MR. RINGER: It is my understanding that you are to appear before the House Committee on Education and Labor on May 8 and that, where desired, you will submit a statement in behalf of any examiner who desires to reply to references leveled at him in the prior testimony before the committee.

I therefore ask that you submit the enclosed statement to the committee on that occasion in my behalf. I have also taken the liberty of attaching thereto a copy of a decision by the Fifth Circuit Court of Appeals where the court saw fit to comment on my conduct of a hearing and treatment of the issues. I ask

² *N. L. R. B. v. Dimon Coal Co.* (201 F. 2d 484 (C. A. 2)). See also, *N. L. R. B. v. Howell Chevrolet Co.*, Feb. 26, 1953 (C. A. 9).

⁴ See *Morgan v. U. S.* (304 U. S. 1, 18); *U. S. v. Morgan* (313 U. S. 409, 422); *Bethlehem Steel Co. v. N. L. R. B.* (120 F. 2d 641, 653 (C. A. D. C.)); *Bethlehem Shipbuilding Corp. v. N. L. R. B.* (114 F. 2d 980, 942 (C. A. 1)), *N. L. R. B. v. Air Associates, Inc.* (121 F. 2d 586, 590-591 (C. A. 2)), *N. L. R. B. v. Baldwin Locomotive Works* (128 F. 2d 39, 47 (C. A. 3)).

that attention be directed to that decision as an appraisal of my conduct as a trial examiner which emanates from a far more reliable source than Mr. Thoresen.

Very truly yours,

MARTIN S. BENNETT, *Trial Examiner.*

(The letter and decision referred to follow:)

NATIONAL LABOR RELATIONS BOARD,
San Francisco, Calif., May 5, 1953.

COMMITTEE ON EDUCATION AND LABOR,
House of Representatives, Washington, D. C.

GENTLEMEN: My name is Martin S. Bennett, and I am a trial examiner of the National Labor Relations Board. I wish to reply to certain testimony relating to my conduct at a hearing.

In his testimony before the committee on April 23, 1953 (typewritten vol. 41, p. 5467), Mr. Ross Thoresen, of Salt Lake City, Utah, made certain comments concerning the *Cache Valley Dairy Association* case (103 N. L. R. B. 42), wherein I was the trial examiner. Specifically, he attributed to me certain questioning of witnesses of his client, the employer therein, as well as certain comments on the same occasion.

I wish to state that Mr. Thoresen's testimony concerning me is utterly false and that I welcome an opportunity to refute it. The transcript of the testimony accurately reflects what was said at the hearing and, in fact, will disclose that I specifically instructed the court reporter to take down everything stated at the hearing. The statements attributed to me by Mr. Thoresen simply were not made, and the transcript so shows.

The hearing under discussion was held in Logan, Utah, in October 1952. I had not met Mr. Thoresen prior to the hearing. I held no conversations with him during the course of the hearing save as may be reflected in the transcript. There was no opportunity to converse with Mr. Thoresen at the close of the hearing because he left early at the final session in order to address a political meeting.

I chanced to meet Mr. Thoresen in Salt Lake City several days after the close of the hearing, on which occasion we merely exchanged greetings. I have not seen or communicated with him since.

Very truly yours,

MARTIN S. BENNETT, *Trial Examiner.*

In the United States Court of Appeals for the Fifth Circuit. No. 13359.
National Labor Relations Board, petitioner, v. Augusta Chemical Company,
respondent

PETITION FOR THE ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD, SITTING AT WASHINGTON, D. C.

(February 13, 1951)

Before HUTCHESON, Chief Judge, and McCORD and BORAH, circuit judges.

PER CURIAM: In this case the labor union involved in the controversy at the plant had not complied with Sec. 9 (f), (g) and (h) of the National Labor Relations Act, as amended, and charges filed by it were dismissed. Thereupon, with the assistance of the same union, charges were prepared and filed in the names of the individual employees claiming to have been discriminated against, and, over Respondent's objection, the complaint, based on these charges, was prosecuted to a favorable conclusion, and the order, sought to be enforced here, was entered.

Respondent opposes enforcement on two grounds. One of these is that the charges, though filed in the names of the individual employees, were in fact filed by the union, and that, as filed, they are mere subterfuges, indeed frauds, upon the law. The other is that the board findings, that the complained of action was discriminatory and in violation of law, are not supported by substantial evidence when the record is viewed as a whole. We cannot agree.

Whatever may have been, or may be, the real purpose of the Statutes under which these proceedings are maintained, its avowed purpose was not to favor or promote unions as such. It was to promote and protect the rights of individual employees to join or not to join unions and to be free from coercion and interference either way.

Because in practice the unions, as such, have dominated, and are dominating, the scene on which these dramas unfold, it may not be said that individual employees have no right to act individually in asserting and vindicating their rights. To do so is to put the cart before the horse, to sublimate the agent above the principal, to make the tail wag the dog.

We are in complete disagreement with Respondent's position on this point. Granted that the disqualified union was active in assisting, indeed in directing, the employees in preparing their charges, it does not at all follow that the employees, by accepting that assistance, disqualified themselves. The saying, that a man cannot touch pitch and not be defiled, may not be thus applied.

The second point, that the evidence is insufficient to support the Board's findings, is no better taken. In our opinion the record fully sustains them. Indeed, we think the report of the trial examiner exhibits throughout not only a thorough understanding and appreciation of the effect of the evidence but a most commendable judicial approach to, and handling of, the issues presented. We are in no doubt that the petition for enforcement should be granted as prayed. Petition granted.

United States of America. Before the National Labor Relations Board. *In the Matter of Cache Valley Dairy Association, and Edwin Gossner, an Individual, and General Teamsters Union Local #976, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL.* Case No. 20-CA-674

DECISION AND ORDER

On November 28, 1952, Trial Examiner Martin S. Bennett issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report and a supporting brief.

The Board¹ has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modifications:

1. The Trial Examiner found that Respondent Association and Respondent Gossner were a single Employer. The Respondents except to this finding on the ground that Gossner is an independent contractor. We find it unnecessary to determine the exact relationship between the Respondents. Both Respondents conceded that they acted as each others' agents with respect to the matters involved in his proceeding; consequently they are both employers within the meaning of Section 2 (2) of the Act. Both are therefore responsible for remedying the unfair labor practices found herein.² We shall, accordingly, order Respondent Association and Respondent Gossner, and each of them, to remedy the unfair labor practices found.

2. As it is unnecessary to our decision, we do not adopt the Trial Examiner's findings, conclusions, comments or assumptions concerning the continued existence of the contract executed by Respondent Gossner and the Union.

3. In the absence of exceptions thereto, we adopt without further comment the Trial Examiner's other findings and conclusions, and the Trial Examiner's recommendations.

ORDER

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent Cache Valley Dairy Association, Smithfield, Utah, its officers, agents, successors, and assigns, and the Respondent Edwin Gossner, an individual, Smithfield, Utah, his agents, successors, and assigns, and each of them, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with General Teamsters Union, Local #976, affiliated with International Brotherhood of Teamsters, Chauffeurs,

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

² Cf. *Cookeville Shirt Company*, 79 N. L. R. B. 667, 671.

Warehousemen and Helpers of America, AFL, as the exclusive representative of all employees of Respondents' cheese factory, excluding office and supervisory employees;

(b) Granting unilateral wage increases in order to induce employees to withdraw from labor organizations;

(c) Promising benefits to employees who resign from labor organizations, refrain from union activities, and cease paying union dues;

(d) Circulating petitions for signatures in favor of an open shop and requesting Respondents to cease deducting union dues;

(e) Threatening to discharge employees who engage in union activities;

(f) Proposing the formation of a labor organization;

(g) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist General Teamsters Union, Local # 976, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with General Teamsters Union, Local # 976, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, as the exclusive representative of all employees in the aforesaid appropriate unit with respect to wages, rates of pay, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a written and signed agreement;

(b) Post at their place of business at Smithfield, Utah, copies of the notice attached to the Intermediate Report and marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being signed by a representative of the Association and also by Edwin Gossner, be posted by them immediately upon receipt thereof and maintained by them for sixty (60) consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Association and Gossner to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Twentieth Region in writing within ten (10) days from the date of this Order what steps Respondents have taken to comply herewith.

Signed at Washington, D. C.

[SEAL]

NATIONAL LABOR RELATIONS BOARD,
PAUL M. HERZOG, *Chairman*.
PAUL L. STYLES, *Member*.
IVAR H. PETERSON, *Member*.

³ This notice shall be modified by substituting the words "A DECISION AND ORDER" for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER." In the event this order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

United States of America Before the National Labor Relations Board Division of Trial Examiners, San Francisco, California. *In the Matter of Cache Valley Dairy Association, and Edwin Gossner, an Individual, and General Teamsters Union, Local No. 976, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL.* Case No. 20-CA-674

ERRATUM

The Intermediate Report in the above-entitled matter disclosing an inaccuracy. It is hereby ordered corrected as follows:

Page 9, line 11, change "Union" to "men."

Dated this 8th day of December 1952.

MARTIN S. BENNETT, *Trial Examiner.*

United States of America. Before the National Labor Relations Board Division of Trial Examiners, Branch Office, San Francisco, California. *In the Matter of Cache Valley Dairy Association, and Edwin Gossner, an Individual, and General Teamsters Union, Local No. 976, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL.* Case No. 20-CA-674

Mr. David Karasick, for the General Counsel.

Mr. Clarence Beck, of Salt Lake City, Utah, for the Union.

Mr. Ross E. Thoresen, of Salt Lake City, Utah, and Preston & Harris, by Messrs. M. C. Harris and G. D. Preston, of Logan, Utah, for Respondent.

Before: Martin S. Bennett, Trial Examiner.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding stems from a charge duly filed by General Teamsters Union, Local No. 976, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, herein called the Union, against Cache Valley Dairy Association, and against Edwin Gossner, an individual, herein jointly called Respondent, pursuant to which the General Counsel of the National Labor Relations Board issued a complaint dated July 10, 1952, against Respondent, alleging that it had engaged in unfair labor practices proscribed by Section 8 (a) (1) and (5) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the charge, complaint, and notice of hearing thereon were duly served upon the parties.

Specifically the complaint alleged that Respondent (1) on and after August 9, 1951, had refused and failed to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, and (2) commencing on November 10, 1951, had unlawfully granted unilateral wage increases; promised benefits to employees; encouraged and assisted employees to circulate petitions requesting it to cease deducting union dues; encouraged and assisted employees to circulate petitions advocating deletion of the union shop provisions of their contract and the decertification of the Union; threatened to discharge employees for engaging in union activity; and had vilified, disparaged, and expressed disapproval of the Union.

Cache Valley Dairy Association and Gossner filed separate answers. The answer of the former denied the commission of any unfair labor practices and alleged that it had no employees; that Gossner, as an independent contractor, was under contract with the Association to manufacture its products; that the employees involved herein were the employees of Gossner; and that Gossner handled his labor force without any supervision from the Association. The answer of Gossner denied the commission of any unfair labor practices and alleged that he had always been willing to bargain with his employees; that the Union has sought to delay an election among his employees to determine whether they desired the Union as their bargaining representative; that he had granted a wage increase on the belief that it had been approved by the Union; that his offer to cancel same was rejected by the Union; and that said raise was given in good faith.

Pursuant to notice, a hearing was held on October 29 and 30, 1952, at Logan, Utah, before the undersigned Trial Examiner, Martin S. Bennett. All parties

were represented by counsel who were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the close of the hearing, the parties were afforded an opportunity to present oral argument and to file briefs and/or proposed findings and conclusions with the undersigned. The General Counsel presented oral argument and a brief has been received from Respondent.¹

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Cache Valley Dairy Association is a Utah corporation which owns a plant at Smithfield, Utah, where it is engaged in the manufacture of swiss cheese and cheese byproducts; the corporation is actually a cooperative of approximately 1,600 dairy farmers in the area whose members include Edwin Gossner. The Association annually manufactures cheese products valued at approximately \$3,500,000, of which \$3,000,000 represents sales and shipments to points outside the State of Utah. The undersigned accordingly finds that Cache Valley Dairy Association is engaged in commerce within the meaning of the Act.

Edwin Gossner and the Association claim that Gossner is an independent contractor under contract with the Association; this is presumably directed to the fact that the employees involved herein are on Gossner's payroll. The record discloses that Gossner, under a contract with the Association, is charged with the responsibility of receiving and processing the milk into a salable product, namely, swiss cheese; this contract reserves to the Association the right to take over these operations. In return, Gossner receives 15 percent of the value of the gross sales; however, he does much more than merely process cheese under a contract. From this 15-percent fee he pays the wages of all production employees in the plant; this complement, including several clericals on his payroll, varies from 50 to 80 in number, according to the season. It may also be noted that none of these are agricultural laborers.

While the Association in its answer claimed that it had no employees, the record shows that it actually employs an office manager and approximately 6 clericals. Gossner's name appears on the letterhead of the Association as production and sales manager and he actually is in charge of all sales. In fact, he is absent from the plant at various times for approximately one month per year on trips relating to merchandising of the cheese. The plant has but one office used for clerical or administrative purposes and it is shared by employees of the Association with those clericals on Gossner's payroll.

As will appear, although the Union representatives attempted to negotiate with Gossner in behalf of the production employees on Gossner's payroll, officials of the Association participated actively in these negotiations, on various occasions announced that they would not approve the inclusion of certain provisions in a contract between Gossner and the Union, and proposed the substitution of others. Under the foregoing circumstances, the undersigned is of the belief that the status of Gossner was more than that of an independent contractor employed by the Association in a production capacity. While his remuneration was on a sales percentage basis, the fact looms that he, in effect, ran the entire business of the Association from production through sales and established policy. With the exception of the office manager of the Association, one, Balls, it does not appear that the Association had a full time employee who concerned himself with production or sales on a policy level; apparently its officials and Board of Directors did not devote their full time thereto. It appears, thus, that Gossner largely determined production and sales policy for the Association and Respondent conceded at the hearing that Gossner and the Association had acted as each other's agent on various occasions. Noteworthy too, is the fact, as set forth below, that in 1946 Gossner, as Plant Superintendent, and A. W. Chambers, as secretary-treasurer, signed the first agreement with the predecessor of the Union; later contracts were signed by Gossner as operator of the plant for the Association.

¹ As the transcript incorrectly reflects the actual testimony in several instances, it is hereby ordered corrected as follows:

Page 68 1.21 employees to employers
297 1.22 direct bargaining to contract

The undersigned finds, on these facts, that Gossner was actually either a high level employee or an official of the Association in charge of production and sales. And, under Section 2 (2) of the Act, it is apparent that Gossner was acting as an agent of the Association, at least in the merchandising of the cheese. It is therefore found that the employees involved herein, whether on Gossner's or the Association's payroll, were actually employees of the Association, and that, in any event, Gossner and the Association constitute a single employer under the Act.

II THE LABOR ORGANIZATION INVOLVED

General Teamsters Union, Local #976, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, is a labor organization admitting to membership employees of Respondent.

III. THE UNFAIR LABOR PRACTICES

A REFUSAL TO BARGAIN; INTERFERENCE, RESTRAINT, AND COERCION

1. THE APPROPRIATE UNIT

The complaint alleges that all employees of the cheese factory, excluding office and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining. The Association in its answer denied the appropriateness of the unit but presented no evidence with respect to this contention; Gossner's answer did not challenge the appropriateness of the unit. The undersigned finds that the afore-described unit, which is the customary production and maintenance unit, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

2 MAJORITY REPRESENTATION IN THE APPROPRIATE UNIT

The parties stipulated that Respondent considered the Union to represent a majority of the employees in the appropriate unit from May 11, 1951, up to approximately January 5, 1952, when Gossner filed a management representation petition in Case 20-RM-95. However, it was further stipulated that both *before* and *after* January of 1952 the parties have met and attempted to negotiate and that at no time has any question been raised as to the majority status of the union. Save for the petition of January 5, 1952, the record is silent as to any challenge of the union majority by the Association or Gossner prior to the latter part of June of 1952, which was after the period directly pertinent herein. And, paradoxically, the record shows that Gossner, when he filed the petition in January of 1952, apparently intended to file a petition directed to the rescission of the union security language in the contract between the Union and Respondent, as described below.

The parties further stipulated that up to and including June of 1952, Gossner deducted dues for each union member who had been in his employ for more than 30 days and that this group constituted a majority of those in the appropriate unit. It was further agreed that since that date there had been on change one way or the other in the dues deduction picture, although since June Gossner has been retaining the dues in his custody.

In view of the foregoing picture, the undersigned finds that at all times material herein, the Union, by virtue of Section 9 (a) of the Act, was and now is the duly designated representative of a majority of the employees in the above described appropriate unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment.

3. CONTRACTUAL HISTORY

The Union was first recognized as the collective bargaining representative of the employees involved herein in a memorandum signed on January 17, 1946, by a predecessor of the Union and the Association. The signers for the Association were Gossner as "Plant Superintendent" and A. W. Chambers as secretary-treasurer. A formal agreement was executed on May 1, 1946 by the predecessor of the Union and the Association with Gossner signing in behalf of the Association as "Operator of plant for Cache Valley Dairy Association". Another agreement was executed in 1947 and the contracting employer therein was again Gossner as operator of the plant for the Association; a later contract was executed by the same parties in June of 1948.

In the interim, after proceedings in Case 20-UA-120, the Union had been certified on April 14, 1948 by the Regional Director for the Twentieth Region as

being eligible to enjoy union security provisions in its collective bargaining agreements with Respondent. On September 1, 1949, a contract was executed by the Union and Gossner as operator of the plant for the Association. Like its predecessor contracts, it contained union security provisions and required employees to join the Union after 30 days employment. Another substantially similar agreement with changes not material herein was entered into on October 11, 1950, effective until July 31, 1951, and from year to year thereafter.

This last agreement provided that of July 31 of any year either party, on 60 days notice prior to said July 31, could request the modification of specific provisions. It further provided that in the event of such notice, or the modification of any article of the agreement or the insertion of any additional provisions, "only the related articles or parts of articles of the agreement shall be effected and the unrelated articles and/or parts of articles shall continue in full force and effect." On May 11, 1951, the Union wrote to Gossner at the Association cheese plant and notified him, pursuant to the agreement, that it was requesting the modification of certain unspecified provisions and an increase in wages. As will hereinafter appear, the wage problem was the issue with which the Union was primarily and almost solely concerned in ensuing discussions.

4 SEQUENCE OF EVENTS: 1951

After the sending of the May notice, Raymond Hansen, secretary-treasurer of the Union, attempted to arrange a meeting with Gossner, but, due to the absence of the latter on business trips, the parties first met on August 9, 1951, at Gossner's office. Present were Gossner, two employees serving on a union committee, business representatives Henry Shomshor of the Union and Clarence Lott, another representative of the Union. Lott presented a request for a 20-cent-per-hour wage increase and for two other minor changes in working conditions. The conversation promptly turned to the wage increase and, as was the case at all future meetings, remained on this issue to the exclusion of the others.

Gossner stated that a raise was out of the question because of unsettled conditions in the industry and proposed a profit-sharing plan under which the benefits, if any, would vary according to the price of cheese each month. This was immediately rejected by Lott who said that the prior experience of the Union with this type of plan had been extremely unsatisfactory, inasmuch as it had not worked out to the benefit of the employee. The parties did agree that if any wage increase were agreed upon it would be made retroactive to August 1, 1951.

A second meeting was held on September 7, 1951, in Gossner's office. Present were substantially the same group plus President Schenk, Secretary-Treasurer Chambers, and office manager Lewis Balls of the Association, together with a United State Conciliator, one, Williams. Wages were again the topic of discussion and Lott pointed out that under the 10 percent formula of the Wage Stabilization Board the employees of Respondent were entitled to a 10 percent wage increase as well as a cost of living adjustment of approximately 2 percent. Gossner again proposed his profit sharing plan, as he did throughout the meetings that followed, and expounded two possible formulas as a method of computation; his proposition did not meet with favor.

Gossner then offered a wage increase of 3 cents per hour together with a partial profit-sharing plan. The profit-sharing plan was immediately rejected and the union committee stated that it would present the 3-cent proposal to their membership. The services of the conciliator were utilized but did not result in an agreement and the meeting ended with the understanding that the Association would give consideration to increasing the 15 percent fee paid to Gossner under his contract. The 3-cent proposal was later rejected by the Union at a meeting held in October.

Another meeting was held on October 11, 1951 and attended by Gossner, officials of the Association, union representatives and another United States conciliator, Lyle Johnson. The Association officials, Schenk and Chambers, reported that the Association was unwilling to increase its 15 percent payment to Gossner. The latter renewed his prior offer of the 3-cent wage increase coupled with the profit-sharing plan. Lott, speaking for the Union, then announced that the Union might have to resort to economic action. At a union meeting held on about October 25 this last offer by Gossner was rejected by the membership.

On November 10, without any advance announcement to the Union or to the employees involved, Gossner suddenly granted the employees of the cheese plant a 3-cent per hour wage increase. And, on December 24, he made the increase retroactive to July 1. This too was not brought to the attention of the Union and came as a complete surprise to the employees.

While at first analysis this increase may appear to have been one granted after bargaining reached an impasse, and possibly not one improperly motivated, a closer inspection leads to a contrary conclusion. Thus, Gossner gave several highly inconsistent reasons for the increase. In a letter sent to the Regional Office on January 30, 1952, he stated that the 3-cent increase was put into effect because the Union claimed that the employees needed assistance and could not afford to wait for a profit-sharing plan. In his answer to the present complaint, Gossner stated that he had granted the increase on the assumption that it had been approved by the Union; that on hearing of the Union's objections he offered to cancel the increase; but that this was not done because the Union announced that it did not desire a cancellation. Not only is there no evidence that the Union indicated its approval of the raise but, in addition, Gossner gave still another explanation for the increase in his testimony herein.

Thus he testified that during his absence from the plant in November on a business trip the increase was granted to the men by his bookkeeper, Army Hansen, who misconstrued certain instructions. Gossner claimed that, prior to departure on this trip, he instructed Hansen to give the milk producers who supplied the plant with milk the benefit of a 3-cent per pound increase in fat content. On Gossner's return from the trip, an employee commented to him on the inadequacy of the wage increase and this was purportedly his first knowledge of the increase and that Hansen had misapplied his instructions. According to Gossner, having made the error, he decided prior to Christmas to make the increase retroactively and accordingly, on December 24, it was made retroactive on the theory that the men would appreciate it at that time. And, although there had been an understanding with the Union that any increase was to be retroactive to August 1, Gossner went back another month to July 1.

In the face of these varying explanations which the undersigned, to some extent, finds implausible, there is the added factor of Gossner's conduct in December after granting the November 10 increase. According to Gossner, employee Owen Pickett who was a member of the union negotiating committee had at one time told him, after a meeting, that he wished Gossner could explain his profit-sharing plan to the employees as he had at the meeting. Although the profit-sharing plan had been repeatedly rejected by the union representatives at all meetings, Gossner, as found, granted the wage increase on November 10; he thereafter posted an announcement on the plant bulletin board which informed the employees that a meeting would be held at the plant on the evening of December 3. Gossner did not invite any of the union representatives to attend. Present at the meeting were the wives of the employees, plant foremen, and Secretary-Treasurer Chambers of the Association.

Gossner was the chief spokesman at the meeting and announced that the men had not properly understood his proposition on wages and that he had therefore brought them to the plant in order to explain it. He proceeded to discuss the 3-cent increase which had been granted as well as the workings of his proposed profit-sharing plan. In essence, under the latter, it appears that 25 percent of the increase in cheese revenues if any, was to be devoted to wages.

Gossner invited comment from the audience and Blaine Jardine of the union negotiating committee spoke up. He stated that he felt the men would be satisfied with an increase of 3 or 4 cents per hour above the existing wages. Gossner replied that he was pleased that the men could make up their minds although he was not happy that they wanted higher wages. Significantly, neither on this nor any other occasion did Gossner inform the employees that the 3-cent increase on November 10 had been an error on his part. Chambers spoke to the group on general farming matters as well as the business of the association after which Gossner announced that he, Chambers and the foreman would then depart. He urged the men to have a meeting to consider the profit-sharing plan. The Union as such was not mentioned during this meeting.²

Accordingly, on or about December 13, a meeting of employees was held in the plant. It is not clear whether this was a meeting of all employees or just of the union supporters. The group initially voted to accept Gossner's proposal but, after further discussion and on learning that the proposals also applied to foremen and the office clericals, the decision was reversed and the profit-sharing plan was again rejected at this same meeting.

As stated, Gossner, on December 24, made the increase retroactive to July 1, one month earlier than originally agreed upon. On December 26, Gossner met

² Findings as to this meeting are based upon the testimony of Jardine and Pickett with which that of Gossner in most respects agrees.

with the union committee, union representative Shomshor and Fullmer Latter, Secretary-Treasurer of the Joint Council of Teamsters in the area. Latter protested that not only was the 3 cent increase inadequate but that it had been inappropriate to grant it without contacting or clearing it with the union representatives. Gossner replied that he had given the increase inasmuch as he felt that he would have to grant one sooner or later and he therefore desired to avoid payment of a large sum of money at one time. Gossner claimed that he could not afford a further increase because of a prevailing poor cheese market. Latter asked him to prove this point and after some discussion Gossner finally agreed to provide Latter with figures in support of his position.⁸

5. 1952 NEGOTIATIONS

Correspondence relative to Respondent's financial statements was exchanged between the parties between December and March of 1952; it was of an inconclusive nature and the matter was apparently allowed to drop. On April 24, 1952, the Union held a meeting at which, after taking note that the cheese market had risen, it was concluded that Respondent was not sincere, was stalling, and was unwilling to come to an agreement with the Union on wages. The membership then voted to strike in support of their wage demands and set May 9 as a deadline for the strike.

On April 28, Secretary-Treasurer Raymond Hansen of the Union sent a form letter to approximately 13 directors of the Association wherein he pointed out that a crisis had developed between Gossner and the Union and that the employees had voted to strike in protest of Gossner's stand. He stated that the Union was willing to arbitrate its differences, as it had been in the past, and proposed such a meeting. A copy of this letter was mailed on the same day to Secretary-Treasurer Chambers of the Association, together with a covering letter announcing that the form letter had been mailed to the Directors; the letter further stated that the Union would be happy to meet with the Board at any convenient time.

On April 30, a meeting was held by Shomshor and Hansen of the Union and two union plant committeemen with Gossner. Gossner expressed considerable anger over the fact that the Union had gone over his head to the Board of Directors. He stated that the Union would have to get anything further it wished from the Board of Directors, that he had met with the Board during the previous week, and that it had been agreed that he, Gossner, should present his profit-sharing plan to the Union in written form. The union representatives announced that a strike deadline had been set for May 9 but that, in any event, they would give Respondent ample notice to prepare for same. Gossner specifically rejected the arbitration proposal, announcing that he would not have any college professor advise him how to spend his money. There was testimony that Gossner again offered a 3-cent raise which would terminate on the following July 1, if the price of cheese fell by that date; it is not clear whether this was the same raise that had been granted in November or was another and no finding is made with respect thereto.

On May 2, Hansen sent a form letter to the membership of the Association. He pointed out that for 9 months the Union had been attempting to come to an agreement with Gossner; that wages at the plant were below those paid by the dairy industry in the area; and that Respondent's wages were out of line with those in other fields in the area. The letter urged the farmers to sympathize with their problems.

The strike was postponed on or about May 8 after Secretary-Treasurer Chambers of the Association advised Shomshor that a letter was in the mail to him and that it bore on the crisis. This letter was dated May 8, 1952, and was signed by President John Schenk of the Association. It did not prove however to be one of a conciliatory nature; in fact, although the Union had postponed the strike in anticipation of its receipt, Schenk proceeded to level various accusations at the Union. The Union was accused of dictating rather than discussing and negotiating terms, a paradoxical accusation in view of Gossner's obduracy in insisting upon a profit-sharing plan and his flat refusal to stabilize wage costs in the plant for a definite period. Schenk rejected the request of the Union to discuss the matter with the Association and announced the decision to sustain Gossner in all positions he had taken with the Union. He attacked the legality of the strike vote and disputed the claim that wages at the cheese plant were below prevailing rates in the area. The letter ended with a statement that the officials of the

⁸ Findings herein are based upon the testimony of Shomshor and Latter. Gossner's testimony, although vague, did not substantially dispute theirs.

Association resented the bypassing of Gossner; that Schenk would be willing to meet with the Union if it would be of any assistance; but that this would take place only if Gossner was present.

On or about May 8, just before the scheduled strike, Union Committeeman Jardine asked to see Gossner. Accompanied by Karl Staub, head cheese maker and a supervisory employee, Jardine met Gossner in front of the plant and the three men entered Gossner's automobile. Jardine asked Gossner what he would offer in order to avoid a strike and Gossner replied that he could not offer anything more than the 3 cents previously offered. Gossner commented that it appeared as though he had enemies in the plant and that he would have to eliminate the enemies and surround himself with friends. At this point, Gossner raised a topic which permeated future discussions with the Union. He said that if this were just a matter between him and the Union, the crisis could be settled in 2 hours; that "he would have to have an open shop. He could not run his business with a Union shop." Jardine asked how one ascertained whether they could have an open or union shop and Gossner replied that at that very moment a petition was being circulated in the plant for such an election.⁴

The strike was finally set for May 14. On May 13 Shomshor and Hansen, for the Union, requested a meeting and met with Secretary-Treasurer Chambers and President Schenk, of the Association; also present was Judge Harris, Respondent's counsel. Gossner was absent from the State at the time on a business trip. The union representatives asked the Association representatives if they could make any offer in order to avoid the strike. The Association representatives replied that they would not offer anything inasmuch as the Association could not afford it. That night the Union held a meeting and reaffirmed its decision to strike on May 14. Shomshor, pursuant to his promise to Chambers, telephoned him that evening and informed him that the strike would start as scheduled. This was presumably in order to enable Chambers to summon to the plant on the following day various farmers who belonged to the Association for the purpose of keeping operations going.

The strike took place as scheduled on the morning of May 14. During the morning President Schenk approached a group of strikers near the plant and discussed the pending difficulty with the group, which included Jardine. Schenk stated that the Association officials felt that they might be able to offer the strikers a 5-cent wage increase, but that they desired to discuss it further among themselves. Later that morning the strike committee, consisting of Jardine, Irwin Coleman, and one, Merrill, asked Office Manager Balls, of the Association, if they could meet with the Executive Committee of the Association. Balls left and returned shortly, informing them that they might enter. Considerable testimony was adduced as to whether Balls informed them that they need not bring Union Representative Shomshor with them; it is deemed unnecessary to resolve this conflict or the further question as to whether Shomshor was nearby at the moment.

The strike committee entered the plant and met with the executive committee, which included Judge Harris and Chambers. The Association group again put forth the same profit-sharing plan, but it was immediately rejected. They then offered to pay the men a 5-cent wage increase on the express condition that the men agree to an open shop. They referred to Gossner's absence and stated that they felt quite certain he would agree to the wage increase if it were coupled with an open-shop proviso. The strike committee replied that the wage increase might be agreeable but that the open-shop proposal would have to be referred to the Union membership for a vote, having in mind presumably the fact that the current contract between the parties provided for a union shop and that dues pursuant to same were currently being deducted by Gossner. Chambers assured them that if they returned to work on the following day, they would be paid for May 14; other testimony indicates that he said a recommendation would be made to Gossner that they be so paid. The men agreed to return to work on the following day.⁵

⁴The findings herein are based upon the testimony of Jardine, a fourbright witness whose testimony has been credited. Staub did not testify. According to Gossner, Jardine said he wanted to avoid the strike and assured Gossner, as tears streamed down his, Jardine's, cheeks, that he was extremely happy to be working for Gossner as were all the men. Gossner raised the subject of the pending unfair labor practice charges and commented that he would ascertain the identity of his friends and enemies when they testified at the Board hearing. As is apparent, Gossner's testimony in some degree corroborates that of Jardine. And, in view of his prior inconsistencies, Gossner's testimony where differing with that of Jardine has not been accepted.

⁵The findings herein are based upon the testimony of Jardine and Coleman which is substantially supported by that of Chambers.

According to the uncontroverted testimony of Coleman, Chambers spoke to him immediately after the foregoing meeting and asked him to call a union meeting and canvass the sentiment of the membership with respect to the Association proposals; Coleman agreed to do this. There is no evidence that this last proposal by the Association found favor among the union membership. The men reported for work on May 15 as they had promised and Gossner returned several days later from his trip. He apparently refused to approve payment to the men of their wages from May 14, inasmuch as the men were never reimbursed for the day despite the commitment of the Association executives.

On or about May 20, Secretary-Treasurer Chambers visited Coleman at his home, as the latter uncontrovertedly testified. He told Coleman that he was certain the men would get the 5-cent increase but that Respondent had had to have an open shop and that "they just could not give us that 5-cent raise unless we had an open shop." At about the same time, President Schenk spoke to Owen Pickett, of the union negotiating committee, as the latter was at work. According to Pickett's uncontroverted testimony, Schenk informed him that the wage dispute could not be settled unless the plant was operated under an open shop.

Late in May or early in June, Gossner had a conversation in his office with Blaine Jardine, of the union strike committee, in the presence of Foreman Straub. According to the uncontroverted and credited testimony of Jardine, Gossner opened the talk by stating that he had not heard anything from the members of the strike committee. He pointed out that any agreement between the strikers and the Board of Directors of the Association was null and void inasmuch as he, Gossner, did his own negotiating. After further discussion, Gossner stated "I absolutely got to have an open shop to run my business * * *. If you fellows will quit paying union dues into the Union for awhile * * * they would get this straightened out in a hurry." Gossner added that he could not tell them what to do, but "you can hold your dues back and you will get this contract settled in a hurry, because if the Union hasn't got the money * * * coming into them, they will get straightened up and * * * if you decide that you want to hold the union dues out * * * you will have to authorize us to do so, and if you want to, you can come down to the office and sign a slip and hold your Union dues back."

Jardine did not accept the invitation to rescind the authority to withhold his union dues. However, shortly thereafter, Foreman Straub approached Jardine during working hours. He told Jardine, as the latter uncontrovertedly testified, that he did not expect Gossner to agree on a contract unless it provided for an open shop. He then handed two petitions to Jardine. Straub recommended to Jardine that he not sign one of the petitions, this being a petition to the Board requesting an election for an "open shop," but that he should sign the other, which requested Gossner to retain the union dues in a trust fund until the contract was settled. As will appear, Gossner took just such action on June 30.

The opposition of Respondent and its supervisory staff to the Union took another tack during the latter part of May. Foreman Danielson spoke to Owen Pickett in the plant and stated, according to Pickett, "we ought to have a union of our own there in the shop and keep our money there." At about the same time Danielson spoke to employee Irvin Coleman about the Union. Danielson stated that if the union "went out" the best thing for the employees was to have a labor organization of their own in the plant to which the men could turn in their dues; that this was preferable to sending dues into the Union, inasmuch as the funds could thereafter be used for the direct benefit of the employees in case of necessity.

The Union made another attempt to compose its difference with Respondent. Business Representative Shomshor and two union committeemen met with Gossner, Schenk, and Chambers in Gossner's office on June 25; also present was United States Conciliator Lyle Johnson. Union representative Hansen again brought up the subject of a wage increase, and Gossner proposed a 5-cent-per-hour wage increase conditioned upon the union agreeing to amend their contract and insert therein an open shop clause. Hansen replied that the union shop provided by the contract had never been an issue in their prior discussions and that he saw no reason for it to be raised at that late date. Schenk intervened and stated that "there would be no contract with any Union at any time without an open shop clause in the contract. That they would not permit such a contract to be signed again." The meeting apparently ended on this unhappy note.

* It will be recalled that Gossner some weeks earlier, in speaking to Jardine, had informed him that petitions were being circulated in the plant.

Apparently realizing at the June 25 meeting that the Union and Respondent were still bound by a contract containing union security provisions, Gossner on June 27, mailed to the Union and to the Regional Office of the Board, a statement which announced that Gossner contended (1) that there was no contract in existence between him and the Union because of the Union's request to modify the contract, the breakdown of negotiations, and the strike, all of which served to breach the contract; (2) that in any event he was giving notice of intent to terminate the contract; and (3) that he stood ready to bargain with the Union for a new contract if it represented a majority of the employees, but that if the pending unfair labor practice charges were withdrawn the atmosphere would be cleared and the possibility of arriving at an agreement would be more likely.

As is apparent, this was the first time that Respondent contended that no contract was in existence between it and the Union. The contract specifically provided that the original request by the Union to modify wage provisions would not affect the remainder of the agreement. Moreover, this June 27 communication was incapable of terminating the contract between the parties inasmuch as the contract by its terms required a 60-day notice prior to its annual renewal date of July 31. Hence, the notice mailed on June 27 was not effective, despite the self-serving statement in its body that it was being given 60 days prior to July 31.⁷

Testimony was developed concerning an impromptu conversation held on June 27 in the plant, during the course of which, according to employee Owen Pickett, Gossner stated to a group of employees that those who "agitated the strike or testified against him would find their jobs insecure and that he would not have the Board tell him what to do." Employee Priest testified to a substantially similar statement but was uncertain of the date or occasion. On the other hand, 8 employees who were present, including Henry Haslam, who was identified by Pickett as being present, testified that they never heard such a statement. Two of them did attribute to Gossner a comment that some of the men might have to testify against him. Under the circumstances, the undersigned makes no adverse finding based upon this incident.

On June 30, business representative Shomshor went to the plant to inquire concerning union dues which had not been remitted by Respondent. Gossner then informed him that he no longer recognized the Union, no longer had a contract with the Union, that there was no longer any need for a Union, that he was refusing to remit the checked off dues to the Union, and that he would hold them in trust until after the present proceedings were concluded. He refused to permit Shomshor to enter the plant and speak to the help. There were no further meetings between the Union and Respondent.

The last item in the factual picture took place sometime after the strike, during the summer. Foreman Straub, during working hours, told Union committeeman Blaine Jardine, according to the uncontroverted testimony of the latter, that there had been two or three men in the plant who had been "agitating this thing" all the time and that "he would probably have to get rid of them." The undersigned finds that Straub was referring to the union activity.

6 CONCLUSIONS

Respondent and the Union had been under contractual relations since 1946 and their most recent contract dated October 11, 1950, was in effect during 1951. The Union duly opened up the wage clause for discussion in May of 1951 pursuant to the language of the contract permitting this narrow opening. The contract specifically provided that the remainder of the agreement would continue in effect, and, accordingly, the contract renewed itself on July 31, 1951, for the following year expiring July 31, 1952. And for that matter the contract renewed itself again on July 31, 1952, inasmuch as no timely notice was served to terminate or substantially modify this year to year contract. See *N. L. R. B. v. International Association of Heat and Frost Workers*, — F. 2d — (C. A. 9), decided 10/13/52. That the Union was the majority representative throughout this

⁷ Although the contract between the parties contained a no-strike clause, its application was expressly conditioned upon compliance by the parties with other provisions of the contract calling for a particularized grievance procedure and, in the event of no settlement during such procedure, referral of the matter to arbitration. It will be recalled that on April 30 Gossner flatly refused to participate in any arbitration procedure. It follows, therefore, that the conditions of the clause were not met and that the clause was not applicable. In any event, Gossner was probably guilty of a prior breach by refusing to submit to arbitration procedure; this would appear to estop him from pleading a later breach by the Union.

period has in effect been conceded and the record demonstrates that during 1951 and 1952 a majority of the employees in the appropriate unit continued to have their dues checked off pursuant to the Union security provisions of the contract. This was true at least until June 30 of 1952.

On its overall aspects, the record herein reflects a labor organization which was relatively mild and patient in its requests, but which encountered considerable resentment and resistance on the part of Gossner. While his original objection to the Union was centered on the fact that it was unwilling to yield to his insistence on installing a profit-sharing plan in lieu of a direct wage increase, his conduct later took a turn in the direction of entirely eliminating the influence of this Union among Respondent's employees.

Thus, after a number of inconclusive meetings, Gossner suddenly in November of 1951 granted the employees a wage increase. His varying and highly inconsistent explanations concerning the circumstances of the increase, including the explanation that it had been entirely an error, have been heretofore described. He then called a meeting for the employees and their families at the plant on the evening of December 3, without notifying the Union representatives of the meeting. Gossner proceeded to inform the employees that they had not properly understood his wage proposition. Then, after referring to the wage increase he had recently granted, he outlined to the employees the aspects of the profit-sharing plan which had so consistently and positively been rejected by the Union to which he made no reference during the meeting. He also urged the employees to consider his proposal and in fact to hold a meeting for that purpose.

This is to the undersigned is indicative not of an attempt to bargain with the Union but rather of an appeal to the employees to accept his proposals and to overrule their collective-bargaining representative. It is manifest and the undersigned finds that this was an attempt to undermine the authorized collective-bargaining representative. The conclusion is therefore warranted that the granting of the November increase, followed by this meeting in December and the appeals voiced therein, constituted a rejection of the collective-bargaining principle. For once a collective-bargaining representative has been designated and represents a majority of the employees, either party, union or employer, wishing to change the terms or conditions of employment must seek out the other for bargaining concerning the proposed changes. This would apply in a situation where a labor organization had not first requested bargaining on a matter and therefore it is all the more applicable here *Medo Photo Supply Corp. v. N. L. R. B.*, 321 U. S. 678; *N. L. R. B. v. Andrew Jergens and Co.*, 133 F. 2d 676 (C. A. 9) cert. denied, 338 U. S. 827* and *N. L. R. B. v. Montgomery Ward and Co.*, 133 F. 2d 676 (C. A. 9).

Moreover, additional light is shed upon Respondent's true motivation herein when attention is paid to its conduct during the negotiations when they resumed in 1952. Thus, after much delay, the Union voted on April 24 to strike on May 9 in support of its wage demands. Nevertheless, in an attempt to avert the strike, it appealed to the officials of the Association to make this resort to economic warfare unnecessary and offered to arbitrate any differences existing between them. Gossner, however, on April 30 demonstrated his anger that the Union had gone over his head and flatly rejected the arbitration proposals. The Union postponed its strike from May 9 to May 14, after being advised that a communication was on its way to them from the Association. However, instead of presenting a constructive proposal which might tend to settle the dispute, the latter proceeded to indict the Union for having an unyielding attitude in the matter. As noted, this was ironical in view of Gossner's conspicuous obduracy in insisting upon a profit-sharing plan.

At this point, Gossner and the Association apparently decided upon a frontal attack on the Union as such. Gossner on May 8 informed Union Committeeman Jardine, an employee, that he, Gossner, had to have an open shop in the plant and that if he had one all difficulties could be settled in a matter of hours. He significantly pointed out to Jardine that a petition directed to such a result was then being circulated in the plant. And not long thereafter Foreman Straub did attempt to procure Jardine's signature to a petition urging Respondent to stop forwarding union dues to the Union.

Again, on the evening before the strike, the Association flatly refused to grant a wage increase and the strike took place on May 14 as scheduled. During a meeting that morning, the Association representatives, after again attempting to sell the Union on the profit-sharing plan, offered a 5-cent per hour wage increase only if the employees would accept an open shop in lieu of the union shop provided in their current contract. The men were also given assurances

that they would be paid for May 14, if they abandoned the strike and returned to work on the following day. The employees abandoned the strike and returned to work on the following day as requested, but Respondent reneged on the promise to pay them the day's wages. On May 20, Secretary-Treasurer Chambers of the Association visited Strike Committeeman Coleman and again offered the 5-cent raise if the employees would accept an open shop. It is most significant that these open-shop proposals were not made to the Union business representative but rather to the employees of Respondent who were serving on the strike and negotiating committees. President Schenk of the Association also informed Employee Pickett of the union negotiating committee that the wage dispute could not be settled unless the plant was operated under an open shop.

Late in May or early in June, Gossner again attempted to convince Employee Jardine of the union strike committee to accept the open shop. Gossner insisted that he could not operate the plant without an open shop. He went further and urged Jardine that he and the other employees should hold back their union dues; Gossner pointed out that all the employees had to do was sign a slip of paper in the plant office authorizing Gossner to do this. Another tack in the same general direction was taken by Foreman Danielson who, on two occasions in late May, urged employees to form a union of their own in the plant.

On June 25, the Union again attempted to compose its differences with Respondent, this time with Business Representative Shomshor present. Gossner again proposed the 5-cent per hour wage increase conditioned upon the Union agreeing to amend its contract by inserting therein an open-shop clause. Union Representative Hansen correctly pointed out that the union shop had not been in issue in any prior discussions which had in essence been confined to the wage problem and that there was no legitimate basis for raising it at that late date. President Schenk of the Association intervened and flatly announced that there would never be any contract with any labor organization without an open-shop clause. As set forth above, Gossner's attempt on June 27 to terminate the contract was untimely and therefore ineffective, inasmuch as he did not comply with the express provisions of the contract for dealing with this issue. Thereafter, on June 30, Gossner flatly refused to forward any further dues to the Union, despite the fact that there was no evidence presented of any rescission of the dues deduction authorizations by the employees. Presumably these funds are still collecting in Gossner's or the Association's hands.

Finally, during the summer, Foreman Straub threatened to discharge two or three unnamed employees in the plant who had been "agitating" the union activity. The record does not disclose what action, if any, has been taken pursuant to this threat.

The undersigned is of the belief that the negotiations in 1952 again strongly show Respondent's opposition to the collective bargaining principle. In 1951, Respondent did not oppose a wage increase just so long as it included a profit-sharing plan, which might or might not pay a wage increase. In 1952, Respondent had no opposition to a wage increase just so long as the employees agreed to insert an open shop in place of the union shop in their current contract. And the record warrants the finding that what Respondent was actually interested in was much more basic, namely, an open shop coupled with the elimination of the Union as the bargaining representative of employees. This interpretation logically follows from Gossner's attempts to get employees to rescind the previously granted authority to deduct union dues: his statements show that he was desirous of eliminating this financial support of the Union and thereby eliminating the Union itself from the plant. And at the same time, one foreman urged an employee to sign a petition urging Gossner not to forward dues to the Union and another foreman sought to persuade employees to form a union of their own in the plant.

As is apparent, the Union was most patient in its dealings with Gossner and the Association: in the belief of the undersigned, Gossner exploited this patience by attempting to undermine the bargaining representative and procure its elimination from the plant. While it is true that the union shop is a permissive bargainable subject and that an employer is not required to agree to one, the picture here is of a different nature. Respondent and the Union had been under a union shop for some time and in all their negotiations there had been no issue raised with respect to same prior to May 1952. During all of these discussions, a valid contract had been in effect and had renewed itself. Finally, after unsuccessfully attempting to undercut the position of the Union in November and December 1952, Gossner in 1952 flatly rejected all attempts to arbitrate their differences and offered a wage increase only if the employees would accept an open shop.

This he coupled with an attempt to eliminate the Union, as such, from the plant. In view of the foregoing, the undersigned finds that Respondent, from August 9, 1951, on, has refused to bargain collectively in good faith with the Union as the representative of its employees. It is further found that Respondent has granted a unilateral wage increase calculated and intended to encourage employees to withdraw from the Union; has promised benefits if the employees would resign from the Union, refrain from union activities, and cease paying union dues; has circulated petitions for signature in favor of an open shop, and requesting Respondent to cease deducting union dues; has threatened to discharge employees engaging in union activities; and has proposed the formation of an independent labor organization in place of the Union. By all of the foregoing Respondent has refused to bargain collectively with the Union and has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in Section III above, occurring in connection with its business operations described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, the undersigned will recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

In the view of the undersigned, the unfair labor practices found above disclose on the part of Respondent a fundamental antipathy to the objectives of the Act and justify an inference that the commission of other unfair labor practices may be anticipated in the future. The undersigned will therefore recommend that Respondent be ordered to cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by the Act.⁸

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. General Teamsters Union, Local 976, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees of Respondent's cheese factory, excluding office and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. The Union was on August 9, 1951, and at all times thereafter has been and now is, the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on August 9, 1951, and at all times thereafter, to bargain collectively with the Union as the exclusive representative of the employees in the aforesaid appropriate unit, Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that Cache Valley Dairy Association, and Edwin Goss-

⁸ It is assumed that, in resuming negotiations with the union and returning to the status existing prior to its commission of unfair labor practices, Respondent will adhere to the various provisions of its agreement with the Union.

ner, an individual, Smithfield, Utah, their officers, agents, successors, and assigns, shall:

1 Cease and desist from

(a) Refusing to bargain collectively with General Teamsters Union, Local # 976, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, as the exclusive representative of all employees of Respondent's cheese factory, excluding office and supervisory employees;

(b) Granting unilateral wage increases in order to induce employees to withdraw from labor organizations;

(c) Promising benefits to employees who resign from labor organizations, refrain from union activities, and cease paying union dues;

(d) Circulating petitions for signatures in favor of an open shop and requesting Respondent to cease deducting union dues;

(e) Threatening to discharge employees who engage in union activities;

(f) Proposing the formation of a labor organization;

(g) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist General Teamsters Union, Local # 976, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act

2 Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with General Teamsters Union, Local #976, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, as the exclusive representative of all employees in the aforesaid appropriate unit with respect to wages, rates of pay, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a written and signed agreement;

(b) Post at its place of business at Smithfield, Utah, copies of the notice attached hereto as Appendix A. Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being signed by a representative of the Association and also by Edwin Gossner, be posted by them immediately upon receipt thereof and maintained by them for sixty (60) consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Association and Gossner to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Twentieth Region in writing within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order what steps Respondent has taken to comply herewith.

It is also recommended that unless on or before twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order, Respondent notifies the aforesaid Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondent to take the aforesaid action.

Dated this — day of November 1952

MARTIN S. BENNETT, *Trial Examiner*

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a trial examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We will bargain collectively, upon request, with General Teamsters Union, Local No. 976, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, as the exclusive representative of all employees at our cheese factory, excluding office and supervisory employees, with respect to wages, rates of pay, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a written and signed agreement.

We will not grant unilateral wage increases in order to induce employees to withdraw from labor organizations.

We will not promise benefits to employees who resign from labor organizations, refrain from union activities, and cease paying union dues.

We will not circulate petitions for signatures in favor of an open shop and requesting us to cease deducting union dues.

We will not threaten to discharge employees who engage in union activities.

We will not propose the formation of labor organizations.

We will not in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist General Teamsters Union, Local No. 976, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

All of our employees are free to become or remain members of the above-named union or of any other labor organization.

CACHE VALLEY DAIRY ASSOCIATION
(Employer)

Dated _____

By _____
(Employer)

By _____
(Employer)

EDWIN GOSSNER
(Employer)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

NATIONAL LABOR RELATIONS BOARD,
San Francisco, Calif., May 5, 1953.

COMMITTEE ON EDUCATION AND LABOR,
House of Representatives, Washington, D. C.

GENTLEMEN: I am a trial examiner on the staff of the National Labor Relations Board. In that capacity, I conducted a hearing on January 15, 16, and 17, 1952, in a proceeding before the Board in the case of Stanislaus Implement & Hardware Co., Case No. 20-CA-583. Upon the record of the evidence adduced at the hearing, I issued an intermediate report on April 8, 1952, containing findings of fact, conclusions of law, and a recommended order. The Board issued its decision and order on November 19, 1952, adopting the findings, conclusions, and recommendations contained in the intermediate report, and setting forth additions thereto.

My attention has been directed to testimony given before the House Committee on Education and Labor with respect to the case by Mr. Clifton A. Rooker, secretary-treasurer of Stanislaus Implement & Hardware Co. Mr. Rooker made various references to the intermediate report in his testimony. As my only connection with the case was to hold a hearing upon the issues tendered, and to submit an intermediate report thereon, my comments on Mr. Rooker's testimony will be limited to that portion which deals with my functions.

It is not my purpose to enter into a discussion of the merits of the proceeding before me. My findings and conclusions appear on the record and are fully reflected in the intermediate report, a copy of which I am attaching. Cases of the type involved are subject, as occasion may require, to additional proceedings before the Board or the courts, and I am guided by considerations of propriety in refraining from embarking on a discussion of the merits of the case. However, as a public servant and as a lawyer who has been a member of the bar for the past 24 years, I am conscious of my obligation to offer whatever assistance is proper to a committee of the Congress. To that end I address myself to some inaccurate statements and omissions reflected in Mr. Rooker's testimony concerning the intermediate report.

In his testimony, Mr. Rooker read a short excerpt from page 9 of the intermediate report, which bears on the allegations that the company had failed to bargain in good faith. The excerpt reads as follows:

"Because of my impression of Haugh and the infirmities in his testimony, I am unable to credit his version of the union-shop negotiations. Alcamo impressed me as a forthright witness, and I credit his account of the negotiations and of the statements he imputes to Haugh."

The intermediate report is 24 pages in length. Twenty of these include a detailed analysis of the evidence, findings of fact, credibility resolutions, and the considerations upon which such resolutions were based. Approximately 13 pages are devoted in the aggregate to a detailed analysis of the evidence bearing on the collective-bargaining issue and to detailed summaries of pertinent evidence offered by both sides on the issue. Yet all that Mr. Rooker read to the committee from the intermediate report on that question was the brief excerpt quoted above. Mr. Rooker omitted to read to the committee any of the detailed discussion of the evidence which precedes and follows the quoted excerpt. In that regard, the attention of the committee is respectfully invited to pages 7 and 8 of the intermediate report, which include a substantial excerpt from the testimony of Mr. Theodore Haugh, who appeared as counsel for the respondent at the hearing and was also its principal witness with respect to the collective-bargaining negotiations in question. These pages, including the quoted excerpt from Mr. Haugh's own testimony, reflect some basic considerations which entered into the credibility resolution and the ultimate findings made with respect to the collective-bargaining issue. Had Mr. Rooker read these pages to the committee, it would have been evident that the brief excerpt he did read with respect to the credibility resolution was a conclusion which was based not only upon the demeanor of the witnesses, but upon a detailed analysis of the record. Moreover, Mr. Rooker neither read, nor adverted to, more than six pages of the intermediate report which follow the brief excerpt he quoted, and which deal in detail with events which followed the negotiations concerning which Mr. Haugh testified at the hearing. These events bear on the collective-bargaining issue, and the attention of the committee is respectfully invited to the relevant portion of the intermediate report dealing with them, and to which Mr. Rooker omitted to make any reference.

Mr. Rooker stated to the committee that the excerpt he read, "further evidenced" a "prejudicial attitude * * * where the veracity of our witnesses was questioned and the testimony of the union accepted as gospel truth." On that score, it is simply untrue that I accepted "all of the testimony of the union" for, as page 5, footnote 7, of the intermediate report indicates, I did not credit the testimony of Mr. Harry Werner, a business representative of the union involved in the proceeding. Be that as it may, for Mr. Rooker to read the brief conclusional excerpt he quoted, without informing the committee of the detailed analysis of the evidence and the findings which precede and follow the quoted excerpt, thus leaving the impression that there was little or nothing in the intermediate report upon which the conclusion was based, is a distortion of the record. I am confident that the committee will base any conclusion it may care to reach upon the basis of the whole record and the entire intermediate report and not upon a brief excerpt from the report lifted out of the context in which it appears.

There are other aspects of Mr. Rooker's testimony concerning the intermediate report upon which I might comment, but I deem it unnecessary, in the light of the foregoing, to consume additional time of the committee in doing so. In the final analysis, the record of the hearing before me and the intermediate report speak for themselves, and I stand upon them both. However, I wish to assure the committee that I stand ready, at any time the committee requests, either to appear before it or submit in any other appropriate form any additional clarifying information it may seek in connection with my functions at the hearing before me or the intermediate report.

I wish to offer the committee my appreciation for the opportunity afforded for the submission of this statement.

Respectfully yours,

HERMAN MARX, *Trial Examiner*

UNITED STATES OF AMERICA. BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS, BRANCH OFFICE, SAN FRANCISCO, CALIFORNIA

*In the Matter of Stanislaus Implement and Hardware Company, Ltd., and
International Association of Machinists, District Lodge No. 41. Case No.
20-CA-583*

Mr. Nathan R. Berke, for the General Counsel.

Messrs. Theodore Haugh and W. M. Caldwell, of San Francisco, Calif., for the Respondent.

Mr. John J. King, of Oakland, Calif., for the Union.

Before: *Herman Marx*, Trial Examiner.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

On April 30, 1951, International Association of Machinists, District Lodge No. 41, filed a charge with the National Labor Relations Board against the Stanislaus Implement and Hardware Company, Ltd.¹ The Union thereafter filed two amendments to the charge, the first on July 16, 1951, and the second on December 17, 1951. Based upon the charge and the amendments hereto, the General Counsel of the Board, on December 27, 1951, issued a complaint alleging that the Respondent had engaged, and was engaging, in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, as amended (61 Stat. 136-163), referred to herein as the Act. The Respondent has been duly served with copies of the charge, amendments thereto, and the complaint.

The significant substance of the complaint is that the Respondent, in violation of Sections 8 (a) (1) and 8 (a) (5) of the Act, has unlawfully failed and refused to bargain with the Union as the duly designated representative of an appropriate unit of the Respondent's employees; and has violated Sections 8 (a) (1) and 8 (a) (4) by failing and refusing to rehire Joseph B. Sims (on occasion referred to as Joe B. Sims), a former employee, because a charge was filed in a prior proceeding alleging that Sims had at one time been discriminated against by the Respondent. The Respondent has filed an answer² in which, in substance, it denies the commission of any unfair labor practices and alleges that it has bargained in good faith with the Union and that it did not fail or refuse to rehire Sims for the reason alleged in the complaint. The answer admits relevant allegations of the complaint describing the Respondent's interstate operations, the Union's status as a labor organization, the composition of an appropriate bargaining unit of the Company's employees, and the Union's certification by the Board, after an election, as the duly authorized bargaining representative of the unit. These admissions will be appropriately reflected in findings made below.

Pursuant to notice duly served upon all parties, a hearing was held before me, as duly designated Trial Examiner, at Modesto, California, on January 15, 16 and 17, 1951. All parties were represented by counsel, participated in the hearing, and were afforded a full opportunity to be heard, examine and cross-examine witnesses, adduce evidence, submit oral argument and file briefs. At the close of the General Counsel's case-in-chief, the Respondent moved to dismiss the complaint. The motion was denied. The motion was renewed after the close of the evidence. Decision on that motion was reserved for disposition in the intermediate report. The findings and conclusions set out below require a denial of the motion, and it is hereby denied. The parties waived the submission of oral argument and have not filed briefs.

¹ The National Labor Relations Board will be designated herein as the Board; International Association of Machinists, District Lodge No. 41, as the Union; and Stanislaus Implement and Hardware Company, Ltd., as the Respondent or Company. References herein to the General Counsel of the Board, where applicable, include the attorney who appeared in his behalf at the hearing.

² Section 102.21 of the Board's Rules and Regulations, Series 6, provides that an answer "shall be . . . signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed." The answer filed herein was signed by W. M. Caldwell, an individual, on behalf of California Association of Employers, whose name appears at the foot of the answer in a signatory capacity as the Respondent's representative. The answer is unsworn and no power of attorney is affixed. In the absence of any challenge to the form of the answer, I have treated it as though it conformed to the requirements of the Rules and Regulations.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a California corporation and is engaged, at Modesto, California, in the business of selling hardware and farm machinery, implements, and parts, at retail, and in servicing and repairing machinery and implements. During the calendar year 1950, in the regular course of its business, the Respondent purchased merchandise valued in excess of \$450,000. Such goods were produced by manufacturing concerns located outside the State of California, shipped to distribution points of such companies within the said State, and thence reshipped to the Respondent's place of business in Modesto. During the same period, in the regular course of its business, the Respondent sold for shipment from its said place of business to points outside California, merchandise valued at more than \$25,000. I find that at all times material herein, the Respondent was engaged in interstate commerce and that its operations affected interstate commerce, within the meaning of the Act.⁵

II. THE LABOR ORGANIZATION INVOLVED

International Association of Machinists, District Lodge No. 41, is a labor organization which admits to its membership persons employed by the Respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. PREFATORY STATEMENT

In a Decision and Direction of Election (91 NLRB 618), dated October 3, 1950, the Board described the composition of an appropriate collective bargaining unit of the Respondent's employees and directed an election among them to resolve a question of representation. In an election which followed, a majority of the employees in the unit voted to designate the Union as their collective bargaining representative. On December 22, 1950, the Board certified the Union as the exclusive bargaining representative of the unit. The Union and the Respondent thereafter engaged in negotiations which will be described in some detail below.

Based upon the Board's Decision and Direction of Election, I find that all employees in the Respondent's place of business who are employed in the tractor, welding, and implement and pump shops, including the truck driver and janitors in these shops, but excluding all other employees, assistant foremen, and all other supervisors, as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. It is also found that since the issuance of the certification, the Union has at all times been the exclusive collective bargaining representative of the appropriate unit within the meaning of Section 9 (a) of the Act.

There has been a prior unfair labor practice proceeding against the Respondent in Case No. 20-CA-512, and some reference to it is appropriate at least as background of the allegations relating to Sims. In that case the complaint alleged that on various occasions in 1950, the Respondent had, in contravention of the Act, interfered with, restrained, and coerced its employees in the exercise of rights guaranteed them by Section 7 of the Act, and had discriminatorily laid off Sims on June 27, 1950, and thereafter refused to reinstate him, because he had engaged in union activity. The respondent in its answer denied that it had engaged in the unlawful conduct attributed to it. After a hearing upon the issues, a Trial Examiner in an intermediate report dated April 20, 1951, found that the Respondent had violated the Act by interrogating employees concerning their union activities; offering them inducements to refrain from union activity or to oppose unionization; threatening and warning them that benefits would be withdrawn and other reprisals visited upon them if they engaged in union activity; suggesting to an employee that he engage in espionage for the Company at a union meeting; and announcing a general wage increase shortly before the representation election in order to influence the

⁵ See, also, 91 N. L. R. B. 618 and the Board's order in Case No. 20-CA-512 (unreported)

votes of the employees. The Examiner found that Sims was not "laid off or discharged" because of "his union affiliation or activities, but was released because of slack business conditions and in order to enable him to accept other employment that had been offered him." The Examiner recommended to the Board that it enter an order directing the Respondent to cease and desist from the unlawful conduct in which it had engaged, and dismissing that portion of the complaint which alleged that Sims had been discriminatorily laid off and denied reinstatement. No exceptions were filed to the intermediate report, and on May 17, 1951, the Board entered an order adopting the findings, conclusions, and recommendations of the Examiner.

B THE BARGAINING NEGOTIATIONS AND RELATED EVENTS

The Union and the Respondent held their first negotiating meeting on January 3, 1951. The Union was represented by John Alcamo, its business representative, and the Respondent by Henry Zimmerman, president of the Company, and Theodore Haugh, a representative of an organization known as the California Association of Employers (referred to herein as CAE), of which the Respondent is a member. There is some question, because the evidence is conflicting, whether Clifton Rooker, the firm's secretary-treasurer, attended the first meeting, but it is undisputed that Rooker attended all the subsequent negotiation meetings. Zimmerman, who appears to have complete control of the Respondent's personnel and business policies, attended about half of the bargaining conferences. Both at the first negotiating meeting and at those which followed, Alcamo and Haugh were the principal spokesmen for their respective sides.

At the first meeting Alcamo gave Haugh and Zimmerman copies of a proposed agreement "in order to start negotiations," as Alcamo put it. The meeting was exploratory in nature and was devoted principally to a reading of the agreement by those present and an explanation of some of its terms by Alcamo. No agreement was reached on that occasion on any of the provisions of the proposal. Either at that meeting or at the one which followed (January 10), Haugh informed Alcamo that agreement by the Respondent with respect to any clause was to be regarded as tentative and was "not to be effective until if and when we actually executed the entire contract." Alcamo stated that his agreements were to be regarded as tentative and subject to "final approval" by the vote of the membership of the Union.

All told, the parties met for negotiations on seven or eight occasions in January,⁴ three times in February, twice in April, and once in May.⁵ During the negotiations, whether in a form proposed by the Union or counterproposed by the Respondent, the parties expressed tentative agreement on most of the subjects under negotiation. It would serve little or no purpose to review the voluminous evidence bearing on the areas of tentative accord or to give separate consideration to each paragraph of the Union's proposal and how it fared during the lengthy discussions between the parties. In my judgment, for reasons that will appear, the key to the Respondent's motivation may be found in the course the negotiations took on at least one issue (the union shop proposal) on which no accord was ever reached and in a pattern of conduct in which the Respondent engaged both during the negotiations and after their termination.

The Respondent's employees went on strike on April 20, 1951. The last negotiating meeting prior to the strike was held on April 19. As of that date, the parties were in disagreement on the Union's proposals concerning (1) a union shop, (2) premium pay for Saturday work, as such, (3) the establishment of two or three⁶ classifications in addition to those established during the negotiations, and (4) wage rates for two classifications. Much, if not most, of the controversy arising from the unresolved issues focused upon the union shop proposal.

⁴ Haugh testified that the parties met on January 11. Alcamo denied it. It is unnecessary, but, as will appear below, no bargaining negotiations occurred on these occasions.

⁵ Alcamo also met with Larry Baxter, a representative of CAE, on November 15 and 16, 1951, but, as will appear below, no bargaining negotiations occurred on these occasions.

⁶ According to Haugh, the disputed classifications were those of welder specialist, blacksmith, and painter. Alcamo's testimony is that the Respondent agreed to the establishment of the painter classification and that the classifications that the Company refused to establish were those of assemblyman-repairman and blacksmith. Although the record is not clear, it is not unlikely that Haugh and Alcamo had the same occupation in mind in their respective references to welder specialist and assemblyman-repairman. If that is so, the only conflict in their relevant testimony is whether they agreed to the establishment of a painter classification. The conflict is of little importance, and the divergence in classification terminology has no significant bearing on the vital issues in the case.

The union shop proposal is contained in Section I, Paragraph 1 (b) and (c) of the proposed agreement. In essence, it provides that employees shall become members of the Union within 30 days of their employment, that they remain members as a condition of continued employment, and that the Company terminate the employment of any employee who fails to join the Union within the prescribed period or to pay "regular initiation fees or dues." The effectiveness of these provisions is made contingent upon their subsequent authorization by the employees in an election, as required by the then existing provisions of the Act.

The following is a summary of Alcamo's version of the principal features of the union security negotiations: At the meetings held on January 10 and 17, Haugh objected to the inclusion of the union security clauses in the proposed agreement, expressing the view at the latter meeting that, if the applicable provisions were included, the Union would seek to gain votes in an authorization election by telling employees that the Company by signing the agreement showed that it favored a union shop. At both meetings Alcamo proposed, as an alternative, that the clauses at issue be deleted from the proposed agreement and placed in the form of a letter from the Company. On both occasions Haugh responded that he had no serious objections to the proposed alternative, and at the January 17 meeting he stated that he would discuss the proposal with Zimmerman. During the course of the next few meetings, Alcamo assumed that such a letter would be forthcoming.⁷ At the meeting of February 5, Haugh informed Alcamo that a few days earlier, at one of its staff conferences, CAE had adopted "a new policy that in the future there would be no discussion on union security," prior to an authorization election, and had taken the position that "it was illegal to discuss" such matters before an election. Alcamo expressed displeasure at the turn the Company's position had taken, inasmuch as CAE had negotiated union security provisions under similar circumstances for other companies. At the meetings of February 6 and 12, Haugh adhered to his refusal to agree to the union security proposal either in the proposed agreement or in the form of a letter. At the February 12 meeting, Alcamo asked Haugh if the Company would consent to the holding of a union authorization election. Haugh replied that it would do so and at Alcamo's request gave the Union a letter to that effect. The parties agreed to defer further meetings until after an election. The next meeting was held on April 13, after a majority of the employees had voted in an election to authorize the Union to enter into a union shop agreement.⁸ During the course of the meeting, Haugh told Alcamo that he was "having a hell of a time" with Zimmerman (who was absent) and that he did not believe that Zimmerman "would ever agree to sign." Haugh coupled his assertion with a statement that it was "off the record" and that, if the occasion arose, he would deny that he had ever made such a statement. At the meeting that day, Haugh for the first time stated that the Company would "not sign any contract with a clause in it that would compel any employee to become a member of the union." Alcamo reproached Haugh for having waited so long before expressing that position, asserting that the Company should have announced the policy earlier so that the Union would have known "what position to take." Alcamo also questioned the "sense" of holding the election. The negotiators then proceeded to discuss other matters at issue. At the next meeting, held on April 19, the Company's representatives were informed that the employees had voted to strike and would do so unless the issues separating the parties were resolved. Haugh reiterated the position with respect to a union shop, which he had expressed at the previous meeting. The parties were unable to reach any agreement on union security and other disputed issues, and on the following day, the Respondent's employees went on strike.⁹

Haugh was the Respondent's principal witness with respect to the negotiations. As he also appeared as the Respondent's trial counsel at the hearing, his direct

⁷ Alcamo seems to have based his assumption upon Haugh's demeanor and upon the latter's statement that he had no "serious" objection to the alternative proposal. Harry Werner, a business representative of the Union who accompanied Alcamo to the meeting of January 31 testified that on that occasion Haugh agreed to furnish such a letter. Alcamo's description of that meeting makes no reference to a discussion of the proposed letter. Alcamo impressed me as a reliable witness, whereas I thought that Werner's recollection of other features of the meeting was infirm. I do not credit Werner's claim that Haugh explicitly agreed to the alternative proposal on January 31.

⁸ It was stipulated at the hearing, and I find, that the election was held on March 23, 1951, and that the Board, on April 12, 1951, duly issued its certificate to the effect that a majority of employees in the unit had voted to authorize the Union to enter into a union-shop agreement.

⁹ The parties met briefly on May 15 at the instance of the State Conciliation Service. They reiterated adherence to their respective positions, and no issues were resolved.

examination was given in narrative form. His account of the union shop discussions accords with that of Alcamo in some respects, and differs substantially in others. It is unnecessary to dwell upon the points of agreement. The following is a summary of relevant testimony given by Haugh with respect to the union shop discussions and reflects the significant differences between his account and that of Alcamo:

At the meeting of January 10, Haugh told Alcamo that the union shop proposal was "not acceptable until an election" and that he objected to, and did not "like," the proposed clauses because they were made contingent upon the outcome of a union authorization election. When the proposal came up for discussion on January 17, Haugh stated that he "didn't like to agree to any union security in advance" of an election because it enables a union to use the agreement as a means of persuading employees to approve a union shop in an election, whereupon Alcamo proposed the use of a letter containing the union shop clauses as an alternative to their inclusion in the agreement, pointing out that both he and Haugh knew of instances where that had been done. Haugh rejected the alternative suggestion on the ground that the Union "could use the letter just like they could the contract." During the meetings held on February 5, 6 and 12, Haugh reiterated his opposition to a union shop agreement made contingent upon the results of an election. On February 12, as on prior occasions, he said that the Respondent would consent to a union shop election and gave Alcamo a letter to that effect. At the meeting of April 13, the first after the election, he informed Alcamo that the Respondent would not agree to a union shop because "we did not believe in compulsory unionism and did not intend to agree to any provision that would require any employee to belong to a union." Alcamo continued to insist upon a union shop, although Haugh stated that the Respondent "might go for (a) maintenance of membership" provision.¹⁰

Haugh denied that he stated that he would discuss the alternative proposal of the letter with Zimmerman; that he made "off the record" statements concerning his "difficulty" with Zimmerman and his (Haugh's) belief that the Company's president would not sign an agreement, and that he told Alcamo that CAE had, a few days prior to the meeting of February 5, adopted a "new policy" that it was illegal to "discuss" a union shop proposal in advance of a union shop election. However, Haugh stated under cross-examination that it was his personal construction of the Act that discussion of a union shop prior to an election was unlawful, and he admitted telling Alcamo that "discussion of the union security clause * * * was possibly illegal, that the union had no right to ask for it until after there had been an election." Haugh did not state when he made these remarks to Alcamo.

Various factors in Haugh's testimony, as well as his demeanor at certain points in his account, militate against acceptance of his version of the union shop negotiations. An evasive flavor and significant self-contradiction appeared in his testimony when he was interrogated concerning the period when the Respondent first reached a decision not to agree to a union shop. As already noted, it was not until April 13 that the Respondent for the first time definitively told the Union that it would not agree to a union shop. This position was not stated until almost 3 months after the negotiations opened, after approximately a dozen meetings had been held, and after the Government had gone to the expense, and the parties had taken the time and trouble, of holding an authorization election. It thus became pertinent to inquire as to the point at which the Respondent had reached a decision not to agree to a union shop. The following excerpts from Haugh's testimony (with emphasis supplied) are revealing:

Q. Now, at what point had the company reached the decision not to agree to a union security provision, Mr. Haugh?

A. That's hard to answer. I had some conferences with Mr. Rooker and Mr. Zimmerman, in which that question was discussed after it became a major issue in the negotiations. I am not certain when the first time was, but I do know it was in the early stages. We didn't discuss it, because I said, "That is not an issue until there is an election." I said, "until after an election we won't talk about it. If they get an election and we have one, and they win it, then we will have to talk about it."

¹⁰ In the light of findings made below, I am unable to conclude that this was a firm offer, as Haugh claimed at the hearing. Moreover, the language used is not that of a firm offer, and Haugh testified that he "just threw it in" because he did not expect Alcamo to accept the proposal.

But whether it was during that period that Mr. Zimmerman and Mr. Rooker told me that they would not sign anything that would force any of their employees to join a union if they didn't want to, I don't know. That is the language they used to me.

Q Well, was that position taken before the union authorization election was held?

A. No, there wasn't any position taken on it.

Q. Well, did Mr. Zimmerman or anyone else representing management tell you that the company would not agree, as you put it, to any arrangement whereby an employee would have to join a union?

A. Yes, sir

Q. Well, was that position given to you before the union authorization election was held?

A Not as I recall, because *we didn't discuss it*. That phase of it, whether or not we would sign one, wasn't an issue until there had been an election, and *I don't recall discussing it* or getting any instructions from Mr. Zimmerman on it until after the election, because I had taken the position that we wouldn't discuss it and we wouldn't sign the one proposed, wouldn't discuss it until after an election.

Trial Examiner MARX Well, it is your position that you didn't discuss it with the company prior to an election, what the company's position was on signing a union security provision?

The WITNESS. Oh, no. *We discussed it*, but I don't recall any occasion when Mr. Zimmerman told me that he wouldn't sign anything requiring union membership until after the election. Until that time I didn't give the question of whether or not we would sign a security clause, whether it be the one proposed or another one, I didn't give that too much consideration because I wasn't interested in talking about it

We did have a conference after the election. I said, "Now we are right up against it. We have got to make up our minds what we are going to do with this clause." Mr. Zimmerman said he wouldn't sign anything that required a man to join a union if he didn't want to.

Q. (By Trial Examiner MARX). And you are certain that he never told you anything of the sort prior to the election?

A. No, I don't. *I recall no discussion of that particular point prior to the election.*

The italicized portions of the quoted excerpts reflect repeated self-contradictions on the question whether Haugh had, prior to the election, discussed the Company's position on a union shop with its management officials. Moreover, it is difficult to believe that he would be unable to recall whether the Company reached its conclusion concerning the union shop proposal before the election. Against the background of Haugh's demeanor while giving the quoted testimony, the self-contradictions and the evasive flavor of his responses to what is basically a simple, but important, question impel me to the conclusion that the witness was considerably less than frank in responding to efforts to shed some light on the subject at issue.

Another illuminating feature of Haugh's testimony may be noted. During his cross-examination he expressed the conviction that as the Act stood at the time of the negotiations it was illegal even to discuss a union shop proposal at bargaining negotiations prior to an election.²¹ If he actually entertained that belief, it seems strange that nowhere in his narrative account of the negotiations on direct examination does it appear that he expressed such a position to Alcamo. Be that as it may, although Haugh denied that he told Alcamo that the relevant

²¹ Under cross-examination, Haugh admitted the possibility that he had on another occasion negotiated concerning a union shop prior to an election, although he stated he did so because the employer involved would not follow his advice. In connection with Haugh's construction of the former provisions of the Act, which provided for union-shop elections, it may be noted that the Board has repeatedly held that it was not illegal to agree to a union-shop provision and make its effectiveness contingent upon the outcome of an election. See *Snyder Engineering Corporation*, 90 N. L. R. B. 783; *West End Chemical Co.*, 89 N. L. R. B. 611; *Barrum Steel and Forge, Inc.*, 88 N. L. R. B. 564; *Asplundh Tree Expert Co.*, 92 N. L. R. B. 1013; *Schaefer Body, Inc.*, 85 N. L. R. B. 1247; *Hazel Atlas Glass Co. and Clarksburg Paper Co.*, 85 N. L. R. B. 1305; *Allen V. Smith, Inc.*, 96 N. L. R. B. 37; *Hunt Construction Co.*, 96 N. L. R. B. No. 128.

construction of the Act was CAE's "new policy,"¹² the significant fact is that he did express such a statutory construction to Alcamo for the first time after the parties had had seven or eight meetings.¹³ Haugh's failure to make any reference, during his direct examination, to this meaningful phase of the negotiations contributes to my impression that his testimony was lacking in frankness.

Because of my impression of Haugh and the infirmities in his testimony, I am unable to credit his version of the union shop negotiations. Alcamo impressed me as a forthright witness, and I credit his account of the negotiations and of the statements he imputes to Haugh.¹⁴

The Respondent's claim of good faith may be measured not only by its course of conduct during the negotiations¹⁵ but by a series of events which occurred away from the bargaining table.

In March, about a week before the union shop election, and while the negotiations were suspended pending its outcome, Zimmerman and Rooker approached an employee, Roscoe Larkin, while he was at work and invited him to join them for coffee. Larkin left his work and went with Zimmerman and Rooker to a nearby restaurant. There Zimmerman asked Larkin if he thought the Union would have any objection to a 10-percent general wage increase effective on May 1. Zimmerman also stated that he realized that the employees "were not making much and (that) the cost of living was going up." Larkin replied that he did not believe that the Union would object to the increase. Zimmerman then asked Larkin if the latter thought that the Company should announce the increase at that time or "just let it go." Larkin responded that he "thought it would be a good idea to announce it" at that time. Rooker concurred and said he would call a meeting of the employees for the evening. At quitting time that day the management assembled the employees in Zimmerman's office. There Zimmerman addressed them for about a half hour, generalizing about the Company's growth and business conditions, explaining that a reduction in force the concern had made sometime before had been necessitated by business losses, and asserting that the firm had begun to make a profit "overnight" because of the Korean war, that he realized that the employees "needed more money" because the cost of living was rising, and that all employees would be given a 10 percent increase effective May 1, provided that the Wage Stabilization Board approved. Zimmerman also intimated that the Union "had no part in" the increase. As he put it to the employees, "we were doing it on our own."¹⁶

Larkin had been employed by the Respondent as a mechanic for about two and one-half years. He was a member of the Union, but held no office, served on no committee, and did not participate in the negotiations.

¹² Larry Baxter, a staff member of CAE (he succeeded Haugh as its representative in the Modesto area), denied that there had been discussion at a CAE meeting of the "new policy" and that the organization has "any policy with reference to union-security clauses." It may be pointed out that Alcamo made no claim that CAE had adopted the "new policy" at the meeting. His testimony was that Haugh had told him about it, and the issue therefore is whether Haugh had done so. Moreover, as will appear below, Baxter gave other testimony which I do not credit.

¹³ Haugh nowhere fixes the date when he informed Alcamo of his legal position. Putting aside for the moment the form in which Haugh expressed his statutory construction to Alcamo, I have no doubt that he did so on February 5.

¹⁴ According to Rooker, Haugh took the position at the January 10 meeting that the Respondent would not agree to a contingently effective union-shop provision. Rooker expressed the belief that Haugh adhered to that position throughout the negotiations. Rooker kept no record of what occurred at given meetings. He appeared uncertain whether he had attended all the meetings after the first, and he gave the impression that his recollection was faulty. Moreover, at no point in his testimony is there any reference to the important point that Haugh took the position, after the negotiations had been under way for a substantial period, that it was illegal to discuss the union-shop proposal prior to an authorization election. I do not credit the implication of Rooker's claim that Haugh clearly and consistently refused, prior to February 5, to agree to a contingently operative union-shop clause in any form.

¹⁵ Before proceeding to a consideration of other evidence bearing on the Respondent's good faith, one more feature of the negotiations may be mentioned. The Union's vacation proposal incorporated the vacation benefits the employees already enjoyed. At the second meeting, however, Haugh proposed that the Union agree to a reduction in the vacation privileges already in effect. The Union's proposal was subsequently adopted. Haugh explained at the hearing that since the Union had proposed "some things . . . that they don't expect to get," he had decided that his proposals would be such as to give him some "trading cloth." In view of findings made below, it is unnecessary to pass on the credibility of Haugh's explanation, although it may be noted that proposals for a reduction in existing economic benefits are often devices used to undermine a bargaining union's standing with employees.

¹⁶ Findings with respect to the conversation with Larkin and the subsequent meeting are based on a synthesis of testimony given by Larkin and Zimmerman. There is no significant difference in their respective versions.

Zimmerman testified that his reason for approaching Larkin was that "we recognize Mr. Larkin as kind of head of the union." Terming Larkin as "kind of an organizer for the union," Zimmerman stated that "every time (Larkin) got in the shop he wouldn't be on the job, he would be talking with someone about the Union." According to Zimmerman, he knew of Larkin's activities because "I could get up behind him (Larkin) and hear what was going on, and some of the boys told me what he was saying."

At the time of his conversation with Larkin, Zimmerman knew that Alcamo was the Union's business agent and that he had been handling the negotiations for the Union. Zimmerman had attended a number of the meetings, and Rooker practically all of them, and both management officials were obviously aware of the fact that Larkin had not participated in the negotiations and that Alcamo was the Union's spokesman. Zimmerman was asked at the hearing whether he had discussed the proposed increase with Alcamo, and he replied with evasive demeanor, "I believe that we talked it over once, but I wouldn't say for sure. It seems to me we talked it over once, and I think if we did, he made the same statement, to my recollection, as the other man, that the unions weren't opposed to the employees getting more money. I wouldn't swear to that, and I am not going to say that is definite." Upon further interrogation, the witness subsequently agreed that he could not recall discussing the proposed increase with anybody connected with the Union but Larkin.

In the light of the fact that the Union is located in Modesto, that Alcamo resides there, and that Zimmerman was fully aware of the negotiations and Alcamo's role in them, one may well question the credibility of Zimmerman's explanation of his reasons for approaching Larkin, particularly when measured by his evasive treatment of the question whether he had discussed the increase with Alcamo. In that regard, it may be noted that during the preceding negotiations with the Union, the Respondent had refused to agree to any increases, and the Union finally agreed to wage scales for all but two classifications (apparently involving two employees), which were the same as those already in effect in the establishment (the rates for the two classifications were still under discussion when the negotiations ended).

Against the background of the bargaining meetings, the timing of the announcement, the setting in which it was made, and the methods used to make it, I find that the Respondent's motivation was to bypass the Union and to influence the votes of the employees in the authorization election.³⁷ The complaint does not charge that the pre-election announcement violated the Act. However, the methods used by the Respondent to bypass the Union and to defeat its efforts to secure a union shop are clearly relevant to the question whether the Respondent brought good faith to the bargaining table. The methods employed, during the period of the negotiations, in the attempt to remove the union shop issue from the area of negotiation contribute to the conclusion that the Respondent did not bargain in good faith.

On July 23, 1951, several months after the strike began, the Union wrote a letter to the Respondent, expressing a desire to resume negotiations and requesting that the Company furnish the Union before such a resumption with a list of the "present employees with classifications and rates of pay." The Respondent replied on July 24, 1951, to the effect that Zimmerman was out of town, that he was expected back in two weeks, and that upon his return the Union's letter would be referred to him. The Union wrote again on July 27, noting that Zimmerman was away, but renewing its request for the information sought previously. The Company replied on July 31 to the effect that it did not feel free to furnish the information until Zimmerman's return and that as soon as he did so, the Union's letters would be referred to him. This letter ended the correspondence. The Respondent did not furnish the information requested, nor did it communicate with the Union about the matter after Zimmerman's return.

Rooker, who wrote the Respondent's letters, testified that Zimmerman was away for about a month after the last letter was written, and he expressed the belief that he discussed the correspondence, "but we took no action," he explained, "because we had been counselled in it and told what steps to take by

³⁷ It may be noted that in the prior proceeding against the Respondent, it was charged with the announcement of a wage increase shortly before the representation election. The Board, by adopting the Trial Examiner's findings, held that the announcement was designed to prevent the organization of the employees and thus violated Section 8 (a) (1) of the Act. The pre-election announcement involved in the prior proceeding was essentially of the same pattern as the one made before to the union-authorization election. The same motivation sponsored both announcements.

the California Association of Employers. Their representative (Haugh) knew of the letters and we simply postponed action on them until we were counselled to take that action." According to Rooker, CAE gave the firm "no further advice on this particular subject." Haugh stated that he helped Rooker write the Company's letters and "just completely overlooked replying to that letter or discussing it" with management officials because he was in the process of moving to southern California about the time Zimmerman returned.

On October 1, 1951, one Larry Baxter succeeded Haugh as CAE representative in the Modesto area. Baxter agreed that Haugh "attempted" to orient him fully concerning the Respondent's transactions with the Union, as well as the contents of CAE's files. Baxter, however, denied that he had ever seen copies of the correspondence or was aware of its existence.

Toward the end of October, Baxter asked Alcamo to meet with him to attempt a disposition of the controversy between the Union and the Respondent (the strike was still in progress). Alcamo agreed and Baxter stated that he would arrange such a meeting with the management.¹⁸ Arrangements were then made for a meeting in Baxter's office on the afternoon of November 15. Baxter notified both Zimmerman and Rooker and was told that one or the other would be present. Alcamo came at the appointed time and remained for an hour or longer, but neither Zimmerman nor Rooker appeared. Baxter telephoned the Respondent's establishment but was unable to reach either individual.¹⁹

According to Alcamo, he and Baxter held no discussion "whatsoever on our contract because Mr. Baxter wanted to wait" (for Zimmerman or Rooker). Alcamo asserted that Baxter evidenced embarrassment because of the non-appearance of either of the Respondent's officers, that he and Baxter made an appointment for a meeting at 2 P. M. on the following day, and that the CAE representative promised that Zimmerman or Rooker, or both, would be present. The next day at the appointed time, Alcamo testified, he came to Baxter's office and waited for Zimmerman or Rooker for about three-quarters of an hour, but neither appeared. According to Alcamo, Baxter "again told me he was embarrassed and he said he would have to get at the bottom to find out what the hell was cooking and he told me he would arrange a later meeting."

Baxter testified that he and Alcamo discussed the union security and weekend premium pay issues at the November 15 meeting, that each reiterated his principal's previous positions, and that neither offered any counterproposal. He denied making an arrangement to meet the following day and stated that he and Alcamo did not meet on November 16, asserting that on that day he met a representative of a cannery union in the morning and with some automobile dealers at noon, that the latter meeting lasted until 2 P. M., and that after the second meeting he left for his home in Fresno.

There is substantial reason to doubt that there was any discussion of issues between Alcamo and Baxter on November 15. Baxter stated that they also discussed a controversy involving another employer, R. B. MacBride Company, and it is probable that business discussions were substantially confined to that concern. The conceded facts are that Baxter had only recently arrived in the area and was a newcomer to the controversy; that he had been informed by Zimmerman that he or Rooker would attend; that he waited for and expected one of the Company's officers to appear, putting in one or more telephone calls to the Respondent's place of business to ascertain why neither had appeared; and that, as he put it, he "held no power of attorney" to dispose of any issue with the Union. Be that as it may, the more important question is whether an appointment was made for the next day and whether the meeting on that occasion took place. It may be noted in that regard that Baxter concedes that he told Alcamo when Zimmerman and Rooker failed to appear on November 15 that another meeting

¹⁸ On direct examination, Baxter stated that he made the arrangements with Alcamo on the telephone. He denied that he made any mention on the telephone of who would be present. It is not clear, however, whether he told Alcamo on some other occasion that the meeting would be arranged with the management. In fact, at one point in his testimony he stated that he could not recall whether he had prior to Alcamo's visit informed the latter that he anticipated the presence of Zimmerman or Rooker. In any event, it is undisputed that he expected one or the other at the meeting.

¹⁹ According to Baxter, Rooker returned his call, but it does not clearly appear whether he did so while Alcamo was in the office. Baxter asserted that Rooker expressed his regrets, stated that he had been detained by business, and proposed that another meeting be arranged. Baxter also testified that he told Alcamo about Rooker's call, but it does not clearly appear that he did so while Alcamo was in the office waiting for a representative of the Company to attend. It may be that Baxter told Alcamo about the matter later. In view of subsequent events, I am unable to accord any significant weight to Baxter's version of Rooker's alleged call, particularly as Rooker, although called as a witness, gave no explanation of his failure to appear.

would be held. Thus, either Alcamo is telling the truth that a meeting was held or Baxter did not keep his word that another meeting would be arranged (it is undisputed that there was no meeting after November 16).²⁰ Moreover, there is evidence of evasiveness and a faulty recollection in Baxter's testimony. For example, in view of his statement that he had promised Alcamo on November 15 that another meeting would be arranged, he was asked what he did to arrange such a meeting. He replied, "No definite time was set, if that is what you mean." He was told that that was not what was meant and the question was repeated. He then stated, "I contacted the Stanislaus Implement Company, and due to the fact that the holidays were in the offing, no time was set at that particular time for a specific meeting." Asked if he communicated that information to Alcamo, he replied, "I don't recall," although at one point in another connection he stated that even with respect to the date of a telephone conversation he could support his recollection from daily reports he submits to CAE. Baxter's explanation does not explain why no meeting was arranged after the holidays, and the fact is that no date was set for a meeting either "at that particular time" or at any other time. Another feature of the evidence adds support to Alcamo's testimony. He testified that when he met with Baxter on the afternoon of November 16, the latter stated that earlier that day the cannery union's representative had given him two pheasants and some frozen food packages. Baxter testified that he could not recall such a conversation. However, it is undisputed that the cannery union's representative did in fact give the pheasants and the food to Baxter on the morning of November 16. The record contains no explanation of how Alcamo knew the detailed circumstances of the gifts to Baxter, except Alcamo's testimony that Baxter told him about the gifts on the afternoon of November 16, shortly after Baxter received them. I am convinced, and find, that Alcamo attended a pre-arranged meeting with Baxter on November 16, as well as on November 15, and that Alcamo's version of what occurred at both meetings is true.

One final conversation between Alcamo and Baxter requires consideration. According to Alcamo, Baxter on a certain occasion spoke to him about a settlement of the differences between the Union and the MacBride concern. Alcamo testified that he told the CAE representative to communicate with him about the matter after a meeting of the Union on November 20. On November 23, Alcamo stated, Baxter tried to reach him, but was unable to do so and left word at Alcamo's home for the Union's representative to telephone him at his home in Fresno. Alcamo did so that evening and his version of the conversation is that they discussed the MacBride matter, that he told Baxter he was unable to do anything in that case; that Baxter then termed the Union "a bunch of damn fools in this area," and stated that the Union was "going to get the same thing at Stanislaus" (as in the MacBride matter), and that when asked to explain what he meant by that, Baxter stated that "we are going to stall you for a year" and that the Respondent would have a decertification election (as in the MacBride matter).²¹

Baxter asserted that he tried to communicate with Alcamo on November 16 concerning the "Stanislaus Implement negotiation (and) the R B MacBride pickets" and was unable to do so, and that Alcamo returned his call that evening. Concerning the conversation, Baxter testified: "I can't repeat it word for word, but during the course of the conversation I asked Mr. Alcamo if he were delaying the negotiations at Stanislaus to the point where the employees would be asking for decertification, as they did in the MacBride case." Baxter testified that he could not recall Alcamo's reply.

A number of infirmities appear in Baxter's testimony. Ignoring the fact that the credited testimony shows that Alcamo and Baxter had a meeting at the latter's office on November 16, even Baxter's testimony suggests that he was embarrassed by the failure of Zimmerman and Rooker to appear on November 15, and it seems implausible that so soon after the Respondent's dereliction, Baxter, having full knowledge of the failure to keep the appointment, would charge Alcamo with "delaying the negotiations." The context of Baxter's version fails to show what features of the conversation could have led to the remarks he claims he made. On the other hand, Alcamo's account is to the effect that he told

²⁰ Baxter offered the explanation that he did not arrange a meeting because the "holidays (presumably Thanksgiving) were in the offing." However, that does not explain why he arranged no meeting after the holidays passed.

²¹ The Board, on September 26, 1951, directed a decertification election in a case involving the Union and R B MacBride. See 96 N L R B No 65.

Baxter he was unable to settle the MacBride matter, and the Union representative's version suggests that that statement led Baxter to make the remarks imputed to him. Alcamo's account is more consistent than Baxter's with the preceding pattern of events which bespeaks a design by the Respondent to dilute and deflect the Union's efforts to secure agreement on what the Union regarded as one of the major features of its proposed contract. I credit Alcamo's claim that the telephone conversation occurred on November 23,²² and his version of the conversation.

I am unable to conclude from the mere fact that Baxter arranged the November 15 and 16 meetings that the Respondent had a serious purpose to bargain in good faith. There is some suggestion in the record that Baxter rather than Zimmerman or Rooker was the moving force in attempting to bring the Union and the Respondent together. He testified that he was anxious to resolve the controversy and to secure removal of the picket line. He was new to the area and to the controversy and it is not unlikely that he was ambitious to resolve two troublesome labor disputes in which CAE and the Union were involved, those pertaining to the Respondent and R. B. MacBride. It may be that he assumed too much concerning the Respondent's willingness to bargain collectively with the Union. The fact that Baxter failed without plausible excuse, to keep his promise to Alcamo to arrange another meeting and his statement to Alcamo on November 23 warrant an inference that his apparent disposition to bring the Respondent and the Union together underwent a marked change at some point after November 16. In any event, the unavoidable facts are that the Union made overtures in July for a resumption of negotiations, but that the Respondent made no effort to avail itself of the opportunity; that Zimmerman and Rooker failed to attend the November meetings; that they offered no explanation on the witness stand of their failure to do so; that the Respondent's evidence contains no credible explanation of Baxter's failure to keep his promise to arrange a meeting after November 16; and that subsequently Baxter revealed a purpose to delay the negotiations as a means of causing the Union to lose its representative status.

I am unable to accord any significant weight to the fact that some agreements were reached during the negotiations. In the first place, these were expressly made "tentative" and were not to be "effective" until the execution of the "entire contract." Second, at least in terms of monetary benefits, the Respondent conceded little, if anything, of substance in the areas of accord. On such important issues as vacations, wage scales, and the furnishing and laundering of coveralls, whatever was agreed upon was already substantially in effect in the Respondent's establishment. Finally, the record presents no good reason not to give literal construction to Baxter's statement that the Respondent had a purpose "to stall you for a year and have a decertification election," as had occurred in the MacBride case. The pattern of the Respondent's conduct during the preceding year is explicable in terms of a purpose to achieve such a decertification.

The evidence establishes a dilatory and evasive approach prior to February 5 to the Union's alternative proposal that the union shop provisions be embodied in a letter; a belated injection into the negotiations of a specious claim that discussion of the union shop proposal prior to an election was unlawful, the avoidance by the Respondent for approximately 3 months of a definitive statement of its position on the union shop proposal; a repeated failure by the Company to avail itself of opportunities to resume negotiations, and the expression of a purpose to use delay in the negotiations as a means of accomplishing the destruction of the Union's representative status. Viewing the whole record, I find that the Respondent has failed and refused to bargain in good faith with the Union concerning the union shop proposal, rates of pay, wages, hours of employment, and other conditions of employment. The Respondent has thereby violated Sections 8 (a) (1) and 8 (a) (5) of the Act.

C THE FAILURE TO REEMPLOY SIMS

Sims began his employment with the Respondent in the spring of 1950, and was laid off on June 27, 1950, by Robert J. Cruess, foreman of the Respondent's tractor shop. Slack business conditions, according to the explanation Cruess gave Sims, were responsible for the layoff. At Cruess' request, Sims left his address and telephone number with the foreman.

²² Alcamo used his diary to refresh his recollection of the date of the telephone conversation.

Sims made application to Cruess for employment on August 1, 1950, and again a few weeks later. The foreman told him in each instance that he "didn't need anyone." On the second occasion, Sims noticed an unfamiliar face in the paint shop and observed to Cruess that a new man had been hired.²³ Cruess responded that "we had to hire a painter," whereupon Sims who, among other duties, had worked in the paint shop, asked, "Well, what's the matter with giving me a buzz on it?" Cruess made no response.²⁴ Sims returned in November, spoke to Cruess about a job, and was informed that "things were still about the same" and that he was not needed. On that occasion, also, Sims saw an employee in the shop, whom he had not seen before. He inquired of Cruess about the new employee, and Cruess confirmed that he had hired the employee, stating that he "is a top tractor man."

The charge in Case No. 20-CA-512 was filed on November 3, 1950, alleging that Sims had been unlawfully terminated. An amendment to the charge was filed on January 24, 1951, effecting some changes not relevant here. A complaint was issued on January 25, 1951, and both the amended charge and the complaint were mailed to the Respondent on that date.²⁵

About a week later, on February 1, Sims called upon Cruess at the Respondent's place of business and asked "about chances of going to work." The foreman stated that there were no openings. Sims pointed out that two new men had been hired, and he asked the foreman: "What's the matter, you got me on your shit list?" Cruess then told Sims, "I want to talk to you," and asked the latter to step into the office. There, the foreman asked Sims if he had filed "a bill against me." Sims denied that he had, whereupon Cruess asked him who had done so, and Sims stated he did not know who had filed the "bill." Cruess expressed the view that "the damn union must have," and Sims disclaimed any knowledge about the matter. The foreman remarked, "Well, they are trying to get me up for firing you for union activities." Cruess asked Sims for the latter's address and telephone number, stating that he had lost it. Sims furnished the information.²⁶ The Respondent did not thereafter communicate with Sims about a position, and he has not been employed by the Company since June 27, 1950.

Cruess denied that he failed and refused to reemploy Sims because of the charge filed in the prior proceeding. He also denied the receipt of instructions from Zimmerman or Rooker not to hire Sims, or even discussing the filing of the earlier charge with any of the Company's officials. The credibility of his denials may be tested, at least in part, by evidence bearing on the Company's employment of others after February 1, and the reasons Cruess advanced for preferring other employees to Sims.

Between February 1, 1951, and the date of the strike, the Respondent hired a substantial number of individuals, some for work in the tractor shop, and others variously for the implement, pump and welding shops. In the tractor shop, the Respondent hired two mechanic's helpers, a janitor, and a mechanic; in the

²³ Sims testified that his second visit was in the latter part of August. The Respondent's records show that an employee (Pilgrim) was hired on September 1, and worked for a time in the paint shop. It is not improbable that Sims' second application was made shortly after September 1.

²⁴ Cruess does not deny Sims' version of the quoted conversation, but the sense of his testimony is that he was not available on the occasion of Sims' second visit and did not talk to Sims. Cruess' testimony reflects a faulty recollection at significant points. For example, Cruess, who was responsible for hiring tractor shop employees, exhibited difficulty in recalling whether new employees were at work on occasions when Sims made his applications. Moreover, there is some confusion in Cruess' testimony relating to periods when Sims applied for work. For example, Cruess attributed one important conversation, actually held in February 1951, to some occasion in October or November 1951, only two or three months before the hearing, although Cruess had testified to the conversation at the prior hearing. Sims appeared to me to have a substantially better recollection than Cruess. Findings with respect to Sims' application for work in 1950, what he observed in the shop, and the substance of his conversations with Cruess, have been based on Sims' testimony, in the light of undisputed evidence reflected in the Respondent's records.

²⁵ Judicial notice has been taken of the Board's records with respect to the charge, amendment thereof, and the complaint in Case No. 20-CA-512. Findings made above are based on, with respect thereto, the Board's records.

²⁶ Findings with respect to the conversation on February 1 are based, in the main, on Sims' substantially undisputed testimony. Cruess' version on direct examination is scant and, for all that appears in it, there was no conversation concerning the filing of a "bill." Under cross-examination, excerpts from Cruess' testimony at the prior hearing were read to him. It appears from that that he testified at the earlier hearing that he asked Sims if he had "filed any complaint against the Company, including myself (Cruess) on an unfair labor practice." Cruess acknowledged that he had so testified and that he gave testimony that he had put Sims at the bottom of a list of applicants and had so informed Sims.

implement shop, four helpers; in the welding shop, four welders; and in the pump shop, one helper.²⁷

Cruess touched on the experience of the two helpers he hired for the tractor shop after February 1. The foreman professed difficulty in recalling one helper, Mitchell, who was hired on April 11. Cruess testified that he could not place the employee, but at a later point in the record, he recalled that Mitchell had "had some experience (in) driving tractors and some experience on ranches, but not in the shop." Cruess asserted that the other mechanic's helper, a man named Ehlert who was hired on March 1, had had "quite a bit of experience * * * as a layout man, laying out steel, * * * in some sort of manufacturing" and had operated a "kind of a combination service station and repair shop" in Los Angeles. According to Cruess, all this led him to believe that "maybe Ehlert might develop into a better man than Sims." Cruess admitted, however, that he knew little about Ehlert's work as a "layout man." He also agreed that, except "indirectly," there is no connection between engines and the "laying out of steel," and the witness offered no explanation of what he meant by "indirectly." Although he admitted that he could not place Mitchell, Cruess intimated that he hired Mitchell "for the same reason that I hired Ehlert." Cruess also offered the explanation that he preferred such employees as Ehlert and Mitchell because "Sims' manner of speech at times was rather vulgar and I figured that that kind of language shouldn't be used in the shop, especially around where customers are coming in."

The record contains a number of factors which prevent acceptance of Cruess' claim that the charge in the prior proceeding had no connection with his failure to reemploy Sims. First, there is no claim that Sims' work was inferior to that of other helpers who were hired. Sims has been a mechanic since 1924 and at the time of the hearing was earning \$2 135 an hour as a truck, tractor, and crane mechanic. Cruess was familiar with Sims' work, whereas Mitchell and Ehlert were lacking in tractor shop experience, and the foreman knew that such was the case. Second, Cruess never rebuked or reprimanded Sims for vulgarity, nor did the foreman even discuss it with Sims. Cruess at no point told him that the latter was not reemployed because he used coarse expressions. And it may be noted that when Cruess hired Ehlert and Mitchell, he made no inquiry to determine their propensity for using vulgar terms. Third, Cruess gave contradictory and evasive testimony on the subject of Sims' alleged use of vulgar expressions in the presence of customers. Initially, asked whether he had heard Sims use such terms in the presence of customers, the foreman replied, after some hesitation, "I believe so." Cruess' demeanor in responding to the question suggested the possibility that he had no knowledge concerning the matter, and he was therefore asked whether he knew that Sims had in fact used vulgarity in the presence of customers. Cruess answered irresponsively: "Not exactly. In other words, it was pretty hard for him to say anything without using vulgar language." In view of the nature of Cruess' reply, the question was repeated and he then admitted that he had no knowledge on the subject. Fourth, J. D. Taylor, a mechanic who had worked in the tractor shop for about 4 years prior to the strike (he participated in it), testified credibly that a certain mechanic who had intermittent employment both before and after Sims' termination indulged in vulgar language quite extensively. There is no evidence that the employee in question was ever reprimanded or rebuked, and he was not denied employment. Fifth, Cruess gave self-contradictory testimony on the question whether he had discussed the charge in the prior proceeding with the Company's officials. Asserting that the question of Sims' reemployment was solely his responsibility, he denied initially that he had even discussed the charge in the prior proceeding with any of the Company's officials. Under cross-examination he at first repeated his denial, but later admitted that he had discussed the charge with one or more representatives of management, although he stated that he could not recall with whom he had had the discussion. Significantly, he supposed that such a discussion took place "shortly after the company knew that the charge was filed against them." Moreover, after his initial denial, he volunteered the statement that

²⁷ Decision was reserved on the Respondents motion to strike evidence bearing on employees hired in the implement, pump, and welding shops. The employees hired in the implement and pump shops were helpers. Sims has been a mechanic since 1924 and at the time of the hearing was employed at \$2 135 per hour in the general repair and overhaul of trucks, tractors, and cranes. It is not unreasonable to assume that he was qualified to work as a helper in the implement and pump shops, as well as in the tractor shop. The record contains insufficient information on the work of the welding shop and the scope of the welders' work. There is, however, some suggestion in Cruess' testimony that Sims "possibly" did some acetylene (gas) welding, although no electric welding. The motion to strike is denied.

he asked someone (presumably a management official, although he did not identify the individual) "whether his (Sims') charge with the Labor Board against the company would have any bearing on me rehiring him or not." Cruess did not state what response he got to his question. Finally, Cruess admitted giving testimony at the prior hearing to the effect that when Sims applied for work in February, the latter inquired if his application was "at the bottom of the list," and that he (Cruess) replied that such was the case and that several applicants were ahead of Sims. Clearly, seniority of application was not the criterion used in selecting Ehlert and Mitchell, if not indeed others as well. Against that background, and in the light of the discussion concerning the filing of the "bill" during the same conversation, the statement that Sims' application would be placed at the bottom of a list adds support to the conclusion that the Respondent entertained discriminatory motives toward Sims.

Copies of the amended charge and the complaint arrived at the Respondent's establishment only a few days before Cruess interrogated Sims about the "bill." It is quite apparent that what Cruess had in mind by referring to the "bill" was the charge filed against the Respondent. That is made clear by Cruess' testimony at the prior hearing that he asked Sims if the latter had "filed any complaint against the Company, including myself (Cruess) on an unfair labor practice." In that setting, measured by the infirmities in Cruess' testimony, both the conversation and the foreman's subsequent failure to hire Sims assume concrete meaning. I find that after February 1, 1951, the Respondent discriminatorily failed and refused to employ Sims because of the filing of the charge and its belief that Sims had filed it or was responsible for its filing.

A question arises concerning the date when the Respondent actually failed to give an available opening to Sims. Although the Respondent hired employees (Pilgrim and Smith) prior to February 1, 1951, to do work for which Smith was qualified, the Trial Examiner in the prior proceeding expressly found that no discrimination occurred prior to February 1. No exceptions were filed, and the Board adopted that finding, precluding any to the contrary. The Respondent hired a mechanic (Henderson) for the tractor shop on February 5, 1951. He was the first person hired after February 1. It is not unlikely that Sims was qualified to perform the same type of work as Henderson. There is also evidence that Zimmerman complimented Sims for his work on June 27 and predicted that if Sims continued his "good work," he would "get on top, get top wages." However, paraphrasing a recent holding of the Board²⁸ in an issue having some resemblance to that involved here, a finding that Sims would have attained the position of mechanic "involves too much speculation (on this record) as to a series of contingent events." The Respondent hired a helper (Metzler) for the implement shop on February 7. Although Sims was employed in the tractor shop, I have no doubt that he was qualified to do the helper's work in the implement shop.²⁹ I therefore find that the Respondent failed and refused to give Sims employment on and after February 7, 1951.

The Respondent pointed out at the hearing that the Board in Case No. 20-CA-512 "ordered that the complaint be dismissed insofar as it alleges that the Respondent discriminatorily discharged and thereafter failed and refused to reinstate" Sims. The Respondent, apparently referring to the phrase "thereafter failed and refused to reinstate," urges that the Board's prior order requires a dismissal of the allegation pertaining to Sims in this proceeding. However, the intermediate report in the earlier case makes it clear that the Trial Examiner based his finding that no discrimination occurred on events prior to February 1951, and that he expressly declined to pass on the question whether Sims was denied reemployment in February or thereafter because a charge had been filed. The Trial Examiner noted that the complaint before him contained no such allegation and that no such contention was advanced at the hearing, and he observed that he was "unable to say" that the relevant question "was fully litigated." I find no merit in the Respondent's claim.

One final question remains for disposition, although apparently not raised by the Respondent. Section 8 (a) (4) makes it unlawful "to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act" (emphasis supplied). The Union, and not Sims, filed the charge in the prior proceeding. The Board has held that where a union files a charge

²⁸ *Alaska Steamship Company*, 98 N. L. R. B. No. 12.

²⁹ It may be noted that during the negotiations, the Union and the Respondent agreed on a single classification and wage scale for all helpers.

on behalf of an individual, the mere fact that the latter did not actually file it himself does not preclude a finding that the employer violated Section 8 (a) (4).³⁰ There is no evidence that Sims specifically authorized or directed the Union to file the charge. However, tacit authority may be inferred from the whole context of the relationship between Sims and the Union and the latter's controversy with the Respondent. Sims was not only a member of the Union, but the first organizational meeting of the Respondent's employees was held at his home. Officials of the Union attended, and employees present joined the organization. Zimmerman interrogated Sims concerning the meeting, and such interrogation was expressly found to be an unfair labor practice and relied upon, at least in part, to support the allegation of discrimination, in the proceedings arising from the charge in Case No. 20-CA-512. One reason why employees join unions is for mutual aid and protection, and it may be assumed, in the light of Sims' union activity, that that was a factor in his membership, particularly if one bears in mind that he participated in the strike by picketing the Respondent's premises, although not an employee. What the Union did in filing the charge was to take steps to aid and protect its members and in that aspect it fulfilled and executed a purpose for which Sims joined, thus in effect acting as his agent.³¹ Moreover, quite apart from the question whether the Union exercised an implied or tacit agency, the evidence establishes that the Respondent assumed that Sims had filed the charge or was responsible for its filing. The individual who is erroneously assumed to have filed a charge and is discriminated against because of the assumption is as much the victim of discrimination and may be as inhibited in the exercise of rights guaranteed by Section 7 as one who suffers reprisal because he has actually filed a charge. In both cases the employer's motive is the same. I do not believe that the phrase "because he has filed a charge" was designed merely to describe a protected group, namely, those who actually file. The more reasonable interpretation is that the purpose of the phrase is to describe a prohibited reason or motivation for discharge. So construed, the statute forbids discrimination as much where it is motivated by an erroneous assumption that an individual has filed a charge as it does where the assumption is correct.

In failing and refusing to employ Sims as found above, the Respondent violated Sections 8 (a) (1) and 8 (a) (4) of the Act.

IV. THE EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in Section III above, occurring in connection with the operations of the Respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

The evidence reveals an underlying opposition by the Respondent to the policies and objectives of the Act. I find that the unfair labor practices disclosed by the record are closely related to other unfair labor practices prescribed by the statute, and that a danger of their commission in the future is to be anticipated from the conduct of the Respondent in the past. In order to make effective the interdependent guarantees of Section 7, it is necessary, therefore, that it be recommended to the Board that its order be made coextensive with the threat of future disregard by the Respondent of its statutory obligations.

Having found that the Respondent has engaged in unfair labor practices violative of Sections 8 (a) (1), (4), and (5) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent discriminatorily failed and refused to hire Joseph B Sims on and after February 7, 1951, because of the filing of the charge in Case No. 20-CA-512, whether the Respondent's conduct be viewed as a violation of Section 8 (a) (1) or Section 8 (a) (4), or of both, I shall recommend that the Respondent offer Sims immediate employment as a mechanic's helper in

³⁰ *Burnside Steel Foundry Company*, 63 N L R B 129, 136. *Briggs Manufacturing Company*, 75 N L R B 569, 572.

³¹ I attach no significance to the fact that Sims denied to Cruess that he had filed the charge. It is not unusual for an employee to disclaim responsibility for engaging in an activity protected by law. Such denials are frequently used as a shield against possible reprisal.

the tractor shop or a substantially equivalent position,³² including, but without limitation thereto, the position of helper in the implement shop or pump shop, without prejudice to his seniority and other rights and privileges, and to make him whole for any loss of pay he may have suffered, by reason of the discrimination against him, by payment to him of a sum of money equal to his loss of wages between and including February 7, 1951, to the date of the offer of employment.³³ Sims' loss of pay shall be computed on the basis of each separate quarter or portion thereof from February 7, 1951, to the date of a proper offer of employment. The quarterly periods shall begin with the respective first days of January, April, July, and October. Loss of pay shall be determined by deducting from a sum equal to that which Sims, but for the discrimination, normally would have earned in the Respondent's employ in each such quarter or portion thereof, his net earnings,³⁴ if any, in other employment during that period. Earnings in one quarter shall have no effect upon the back pay liability for any other quarter. The Respondent shall, upon request, make available to the Board and its agents all records pertinent to an analysis of the amount due as back pay or to the direction that the Respondent offer him employment.

Having found that the Respondent has failed and refused to bargain in good faith with the Union as the exclusive representative of its employees in an appropriate unit, and, since such failure and refusal constitute a refusal to bargain collectively within the meaning of the Act, I shall recommend that the Respondent be directed to bargain collectively with the Union as the representative of such employees, with respect to lawful requirements that they join the Union, rates of pay, wages, hours of employment, and other conditions of employment, and, if an agreement is reached, to embody its terms in a signed agreement.

Having found that the Respondent, in violation of Section 8 (a) (1) of the Act, has interfered with, restrained and coerced employees in the exercise by them of rights guaranteed by Section 7 of the Act, I shall recommend that the Respondent be directed to cease and desist therefrom in the future.

Upon the basis of the foregoing findings of fact and of the entire record in this proceeding, I make the following:

CONCLUSIONS OF LAW

1. International Association of Machinists, District Lodge No. 41, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All of the employees in the Respondent's place of business at Modesto, California, who are employed in the tractor, welding, and implement and pump shops, including the truck driver and janitors in these shops, but excluding all other employees, assistant foremen, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. International Association of Machinists, District Lodge No. 41, was on December 22, 1950, and at all times since has been, the exclusive representative of all the employees in the aforesaid appropriate unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By failing and refusing on various occasions during the period from and after January 3, 1951, to bargain collectively with International Association of Machinists, District Lodge No. 41, as the exclusive representative of its employees in the appropriate unit, the Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8 (a) (5) of the Act.

5. By discriminating against Joseph B Sims because he had filed a charge or because the Respondent believed that he had filed a charge or was responsible

³² In accordance with the Board's consistent interpretation of the term, the expression "former or a substantially equivalent position" is intended to mean "former position wherever possible, but if such position is no longer in existence, then to a substantially equivalent position." See *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 N. L. R. B. 827.

³³ The fact that the record in this proceeding is insufficient to support a finding that Sims would have been promoted out of a helper's classification should not be construed as precluding a finding in any future proceeding to determine the scope of the Respondent's wage liability that Sims would have been promoted after February 7. If in fact such a promotion would have occurred, it may be that the General Counsel and the Respondent can reach agreement on the matter in the process of effectuating compliance with the Board's order. Nothing herein is to be construed as precluding such an agreement or any future findings concerning the promotion question and the extent of the Respondent's liability for back pay.

³⁴ For the meaning of the term "net earnings," see *Crossett Lumber Co.*, 8 N. L. R. B. 440.

for such filing, the Respondent engaged, and is engaging, in unfair labor practices, within the meaning of Section 8 (a) (4) of the Act

6. By interfering with, restraining, and coercing its employees in the exercise by them of the rights guaranteed in Section 7 of the Act, the Respondent has engaged, and is engaging, in unfair labor practices, within the meaning of Section 8 (a) (1).

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Sections 2 (6) and 2 (7) of the Act.

RECOMMENDATIONS

On the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that Stanislaus Hardware and Implement Company, Ltd., of Modesto, California, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Failing or refusing to employ any individual, or otherwise discriminating against him, because he has filed a charge with the Board or because the Respondent believes that such individual has filed a charge or is responsible for such filing;

(b) Failing or refusing to bargain collectively in good faith with International Association of Machinists, District Lodge No. 41, as the exclusive representative of all of the employees in the Respondent's place of business at Modesto, California, who are employed in the tractor, welding, implement and pump shops, including the truck driver and janitors in these shops, but excluding all other employees, assistant foremen, and all other supervisors as defined in the Act.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right of self-organization, to form, join or assist labor organizations, to join or assist International Association of Machinists, District Lodge No. 41, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Offer Joseph B. Sims immediate employment as a mechanic's helper in the tractor shop or a substantially equivalent position, including, but without limitation thereto, the position of helper in the implement shop or pump shop, without prejudice to his seniority rights and privileges; and make him whole in the manner set forth in Section V, above, entitled "The remedy."

(b) Upon request, bargain collectively in good faith with International Association of Machinists, District Lodge No. 41, as the exclusive representative of the employees in the appropriate unit described above with respect to lawful requirements that they join the Union, rates of pay, wages, hours of employment, and other conditions of employment, and, if an agreement is reached, embody it in a signed agreement;

(c) Post at its place of business in Modesto, California, copies of the notice attached to this Intermediate Report marked Appendix A. Copies of said notice to be furnished by the Regional Director for the Twentieth Region, shall, after being signed by the Respondent's representative, be posted by the Respondent, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Twentieth Region in writing, within twenty (20) days from the date of the receipt of this Intermediate Report, what steps the Respondent has taken to comply therewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report, the Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

Dated this — day of April 1952

HERMAN MARX, *Trial Examiner.*

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a trial examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not fail or refuse to employ any individual, or otherwise discriminate against him, because he has filed a charge with the National Labor Relations Board or because we believe that such individual has filed a charge or is responsible for such filing.

We will not in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to join or assist International Association of Machinists, District Lodge No. 41, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

We will offer Joseph B. Sims immediate employment as a mechanic's helper in the tractor shop or a substantially equivalent position, without prejudice to his seniority rights and privileges, and make him whole for any loss of pay he suffered as a result of our discrimination against him.

We will bargain collectively in good faith with International Association of Machinists, District Lodge No. 41, as the exclusive representative of the employees in the appropriate unit described below with respect to lawful requirements that they join the Union, rates of pay, wages, hours of employment, and other conditions of employment, and, if an agreement is reached, embody it in a signed agreement. The bargaining unit consists of:

All of the employees in our place of business at Modesto, California, who are employed in the tractor, welding, and implement and pump shops, including the truckdriver and janitors in these shops, but excluding all other employees, assistant foremen, and all other supervisors as defined in the National Labor Relations Act.

STANISLAUS IMPLEMENT AND HARDWARE
COMPANY, LTD.
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

(In accordance with an earlier ruling by the committee, the following letters are made a part of the record:)

MAY 14, 1953.

THE COMMITTEE ON EDUCATION AND LABOR,
House of Representatives, Washington, D. C.

GENTLEMEN: At the committee hearing on Friday, May 8, 1953, I filed with you a general statement with respect to criticisms of hearing examiners of this agency and two statements by individual trial examiners, Martin, Bennett, and Herman Marx. As I indicated to your committee at that time, I was prepared to discuss the record in the particular cases in which witnesses had criticized the trial examiner. As you will recall, the hearing continued until almost 7 o'clock and it was agreed that I should not prolong the hearing. I now respectfully ask permission to file this supplemental statement, pointing out briefly the explanation I would have given if time had permitted.

1. With respect to Howard Myers, the testimony of Lawrence B. Gilbert is found in his testimony on April 24, 1953, in volume 42 at page 5621. This refers to the *A. L. Gilbert Company* case (20 C. A. 746). He stated that the trial examiner overruled an objection to the offer of General Counsel's exhibit 5, an affidavit prepared by a field examiner, but not signed by Mr. Gilbert. I have examined the transcript of the hearing in this connection and find that General

Counsel's exhibit 5 was an affidavit prepared and signed by Mr. Gilbert and admitted without objection (transcript, p. 412). The affidavit which was not signed was marked as General Counsel's exhibit 4. It was offered, objected to and rejected by the trial examiner (transcript p. 412). It is thus apparent that it was not received in evidence.

Mr. Gilbert also charged that the trial examiner "deliberately tried to get one of the witnesses to say he heard me say something I had not said. Our attorney objected in such a manner that Mr. Myers finally apologized" (vol. 42, p. 5624, Apr. 24, 1953). I have read the portion of the transcript referred to (pp. 671, 672). It does not sustain Mr. Gilbert's claim that the trial examiner deliberately attempted to mislead the witness nor that the attorney pressed the trial examiner until he apologized. When the attorney suggested his different understanding of the previous testimony, the trial examiner indicated he might be mistaken, checked his notes, stated that he had been in error, and apologized for misstating the record.

The intermediate report in the Gilbert case has not yet been issued.

2. Martin Bennett was criticized by witness Ross E. Thoreson on April 23, 1953 (vol. 41, p. 5463). The case was *Cache Valley Dairy Association* (case No. 20, C. A. 674). He testified that the trial examiner had questioned the company witnesses involved and commented with respect to the likelihood that they had forgotten an incident testified to by a witness for the General Counsel. I have examined the transcript with reference to this matter and find no such questioning by the trial examiner and no such comments. Your attention is called to the fact that in his intermediate report, at page 12, he found in favor of the company on the issue involved and that such intermediate report containing such finding was issued to the parties on December 1, 1952, almost 5 months before Mr. Thoreson testified before your committee. Mr. Thoreson knew or should have known such fact.

3. There was criticism of Sidney Lindner by Emery F. Robinson (vol. 34, pp. 4603-4607) with reference to his findings in his intermediate report in *Poultry Enterprises, Inc.* (case No. 10, C. A. 1223). He stated, "The testimony of the persons connected with the company in executive capacity was brushed aside in the finding(s) of fact in one sweeping blow" (p. 4603), and quoted a paragraph from page 8 of the intermediate report as follows:

"The testimony of Nix, Stewart, and Mrs. J. H. Martin, hereinabove set forth, was not convincing. I do not credit it."

This conclusion followed a full discussion of the testimony of Mr. Nix, Mr. Stewart, and Mrs. Martin. Whether the trial examiner was correct in his findings of fact and his resolutions of credibility is a matter for determination by the Board and the courts on the entire record.

4. George Downing was merely mentioned as the trial examiner in a subsequent case against *Poultry Enterprises, Inc.* (case No. 10 C. A. 1562), and I find no criticism of him (vol. 34, p. 4616, Apr. 14, 1953).

5. Herman Marx was criticized by Mr. Clifton A. Rooker because of his resolution of credibility in his intermediate report in *Stanislaus Implement and Hardware Company* (case No. 20 C. A. 583) (vol. 42, p. 5607, 5617, Apr. 24, 1953). The trial examiner in his statement already furnished your committee points out that this conclusion as to credibility follows a full discussion of the evidence with respect to the issues involved.

I will appreciate the inclusion of this supplemental statement in the record.

Yours very truly,

WILLIAM R. RINGER,
Chief Trial Examiner.

SAN FRANCISCO 21, CALIF., May 11, 1953.

COMMITTEE ON EDUCATION AND LABOR,

House of Representatives, 83d Congress,

Washington, D. C.

(Attention: John O. Graham, Chief Clerk)

GENTLEMEN: The testimony of Mr. Lawrence B. Gilbert before your committee has but recently come to my attention. I refer specifically to the testimony of Mr. Gilbert appearing at page 5624 of the transcript:

"Several of my employees were told by the attorneys for the National Labor Relations Board that if they testified right they would surely be granted pay for the time they had been off the job." [Emphasis supplied]

I do hereby, generally and specifically, deny the implications of such charge. I am an attorney 32 years of age, who has been employed by the National Labor Relations Board, Twentieth Regional Office, since 1948. I commenced work for this Agency immediately after completing law school at Georgetown, Washington, D. C. I am admitted to practice in the District Court of the United States for the District of Columbia, the Supreme Court of California, and all Federal courts in this jurisdiction. Prior to entering law school, I served as a lieutenant in the Naval Reserve through most of the operations in the Pacific theater of the last war.

It is true, as the testimony of Mr. Gilbert indicates, that I was one of the Government attorneys who made an appearance at the recently conducted hearing involving the Gilbert Co before Trial Examiner Howard Myers of the National Labor Relations Board. My appearance was limited to the dates January 15 and 16, 1953. On the latter date, by agreement of all counsel, the hearing was continued until February 2, 1953. When the hearing reconvened on February 2, 1953, I was not present, due to the necessity of my presence at another hearing at Las Vegas, Nev.

I was sent to Modesto, Calif., on January 15 and 16 to give what assistance as seemed necessary to Robert J. Scolnik, an attorney recently assigned to this office. This case, incidentally, was the first case tried by Mr. Scolnik and from my observation during the 2 days of my presence, I considered that he presented his case as efficiently as does any young attorney trying his first lawsuit.

At no time did I personally interview or discuss with any witness, called by the General Counsel, his testimony; nor did I talk to any employees of the company.

Inferentially and by unnamed witnesses, Mr. Gilbert implies that I induced or attempted to induce favorable testimony for the General Counsel's case by an offer of back pay. As I indicated above, I did not examine any witnesses called by the General Counsel, or indeed discuss their testimony with them prior to examination, a fact within the knowledge of Mr. Gilbert.

My moral integrity has never been questioned either directly or by loose or careless inference.

I respectfully request that Mr. Gilbert be called upon to produce the employees to which he attributes the aforementioned remarks of the Government attorneys. I would welcome the opportunity to be present and to cross-examine any witness Mr. Gilbert can produce who testifies that I, personally, offered a lure of back pay if such witness testified "right." I am morally certain that this cannot be done.

If the above request be not granted, I respectfully request the opportunity to appear before your committee under oath to present my version of these loose and unsupported charges.

Respectfully yours,

ROBERT V. MAGOR, Attorney.

NATIONAL LABOR RELATIONS BOARD,
Winston-Salem, N. C., May 13, 1953.

Mr. JOHN O GRAHAM,
Chief Clerk, Committee on Education and Labor,
United States House of Representatives,
Washington, D. C.

DEAR MR. GRAHAM: Mr. George J. Bott, General Counsel of the National Labor Relations Board, has forwarded to me certain excerpts from the record of hearings held before the House Labor and Education Committee, in which Representative Barden commented upon my conduct as an employee of the Board. Mr. Bott has requested me to file with the committee this letter of explanation of the circumstances surrounding the making of the remarks so that the committee may have a full and complete picture of what transpired and what I actually did say.

The excerpts from the record I have received cover remarks by Representative Barden on February 24 and 25, 1953, and May 8, and are set forth below:

EXCERPTS FROM HEARINGS BEFORE THE COMMITTEE ON EDUCATION AND LABOR,
HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1953

"Mr. BARDEN. I want to read you a discussion that took place in an office of a business concern, and this was taken down by a stenographer and sworn to be

the truth. This man walked in the office—and I will withhold the names, in view of the fact that there is something pending on it and I do not care to take the responsibility of putting them in a jam.

"Mr. HERZOG. I do not think that would happen, but I am glad not to have the name.

"Mr. BARDEN. They think so, and that makes it so to them, whether it is or not. They feel that way.

"This boy in the office asked the man what he could do for him. Now, this was a man from the Winston-Salem office in North Carolina. He said 'My name is McCormack, representative of the United States Government, and I would like to see So-and-So.'

"Mr. So-and-So is out of the State.

"I would like to see So-and-So.

"He is not here, either.

"Well, where is he, this party?

"Out of town.

"Where?

"I do not know.

"Doesn't this party usually leave word where he is going?

"Sometimes. Sometimes he doesn't.

"Who is in charge of the plant at this time?

"Answer. I do not know of anyone being in absolute authority.

"Question. Are you in charge?

"Answer. No; only the office.

"Question. Would you like to come down to the city hall and testify?

"Answer. No.

"Question. Would I have to drag you down?

"Answer. Yes.

"Question. Can I use your telephone?

"He placed the call, and then asked who owned the plant, if a particular person owned the plant.

"Answer. This is not for me to say.

"Question. Who do you people think you are down here, that you think you can buck the United States Government? If we have to, we will make it tough on you.

"Answer. Are you the Government or do you work for the Government? You aren't the President of it, are you?

"Question. No. I work for the Government.

"Answer. Well, I am not president of this place, either.

"Then the phone message went, and in a bullying attitude he takes the phone. One of his comments was: 'Some guy, I don't know who he is, bookkeeper or something, he is sitting over here punching a machine, and doesn't pay any attention to me. They will probably get in touch with their lawyer, if they have one, as soon as I leave here.'

"Then further on, at the end of the conversation, he commented he guessed he would put the squeeze on.

"Now, that is not unusual. I have had 3 of these cases right near me, and the pattern is the same * * *

"FEBRUARY 25, 1953

"Mr. BARDEN. I read to Mr. Herzog yesterday a very horrible illustration of a man coming in who took the attitude that he was the United States Government * * *

"But I want to read to you how one of your men dealt with the situation. He says to this man in the office, 'Would you like to come down to the city hall and testify?' 'No.' 'Would I have to drag you down?' 'Yes.' 'Can I use your telephone?' And he reaches over and takes the telephone in the office there and calls up the Winston-Salem office. After going over the situation in a most obnoxious manner, he said, 'Well, if you don't do so and so, we will put the squeeze on them.' * * *

"Mr. BOTT. I think we have a very good man in our Winston-Salem office, Mr. Reid Johnston who has been made regional director.

"Mr. BARDEN. How long has he been there?

"Mr. BOTT. As regional director?

"Mr. BARDEN. How long has he been in that office?

"Mr. BOTT. Seven years

"Mr. BARDEN. Well, he is under suspicion with me.

"Mr. BOTT. I hope I can remove it, if you will give me the opportunity sometimes, Congressman

"Mr. BARDEN. I am going to tell you what is the truth. If you do not begin to send a different type of folks down in my section of the country, you are going to show up some morning missing 2 or 3 of them. This is exactly what is going to happen. I have absolutely undeniable information, and I happened to be around when one situation took place. I do not ask you if it is so, and I do not ask them if it is so. I know it is so.

"MAY 8, 1953

"Mr. BARDEN. Now, Mr. Bott, he does not mention in his statement there a single meeting or discussion that he had with Mrs. Jackson, does he?

"Mr. BOTT. Yes, I think he does.

"Mr. BARDEN. I could not find any.

"Mr. BOTT. That is with Mrs. Jackson?

"Mr. BARDEN. That is right.

"Mr. BOTT. McCormick says nothing about talking with Mrs. Jackson. There were two men on this case, in the early stages. There was the field examiner, who makes the preliminary investigation. He had a conversation with Mrs. Jackson which does not appear here in extenso.

"Mr. BARDEN. He does not mention talking with Mrs. Jackson.

"Mr. BOTT. He does. He says. " * * * the field examiner advised Mrs. Jackson that he would be in the vicinity of Morehead City on August 3 and would like to meet with her at a conference.' And then he 'finally saw Mrs. Jackson on August 10, and at that meeting Mrs. Jackson told him * * *' and so forth.

"Mr. BARDEN. Told who?

"Mr. BOTT. This is a field examiner, and this is not McCormick. Mr. McCormick was the hearing officer, and the field examiner made the preliminary investigation as they did.

"Mr. BARDEN. I want to read you a report of a meeting of September 6, I believe it was, of 1949, at 12:59 p. m.—

"Mr. BOTT. What was the date?

"Mr. BARDEN. September 6, 1940, at 12:59 p. m. [reading]:

"Miles McCormick came in the office to see me, and he presented evidence stating he was an NLRB representative. He asked me why I had not appeared at the hearing, as the subpoena requested. I said that the subpoena stated that I could appear if I wanted to.

"Then he told me I was wrong. He said that I, Mr. Dill, and Mr. Hooper, had all been subpoenaed and that the only one to show up at the hearing was Mr. Hooper. And when it came time for him to take an oath to tell the truth, Mr. Hooper refused to do so, as he didn't want to swear to a lie.

"I said Mr. Hooper should not have been subpoenaed as he knew nothing about this. And he said he would subpoena anybody he pleased, and that they would appear the next time. He said he had taken enough insolence from us; that this was the first time he had ever experienced any such insolence, and he repeated again that the next time he came here he would have the power to get what he was after, and who did we think we were, fighting him and the United States Government.

"He then told me that he would have to have certain commerce information, and I said that this information had already been supplied. And he said the only information he had received was on the outgoing shipments, and he must have that on the incoming

"I replied that I would have to take it up with my associates and then get counsel before I gave this information

"Mr. McCormick requested that I give him the address where he could get this information right now, and I said that it would come through this office, after I had contacted my associates and counsel.

"McCormick asked me if I had not had sufficient time to get this information, and I replied, "No, we have been too busy to get everybody together so far."

"Then Mr. McCormick made the statement that, "You had better get the data and get it damn fast."

"I told Mr. McCormick that that was no way to speak to a lady, and that he could leave. Mr. McCormick then apologized for his statement, but persisted

in demanding the information he wanted. He made the statement that the next time he came here, he would have the power to subpoena the books and records, if necessary, so that he could get the information he wanted.

"I said to him as he was leaving, 'Mr. McCormick, after you have lived a little longer, you will probably learn how to talk with people,' and he mumbled something in reply.

"Mr. McCormick was accompanied by another man who we have reason to believe was Sullivan connected with the union. They were both very uncouth in dress. Although this man with McCormick said nothing, McCormick was most uncouth in his manner and appearance, as well as belligerent."

"Now you tell me that you meticulously investigated this situation down there among those folks, and that that man is the type of man that you want to handle the affairs of the people in my district?"

"Mr. BOTT. There is nothing about that conversation in this document, but I have a recollection of having received a report on that incident. It is not in this document, but I do have that recollection.

"Mr. BARDEN. Mr. Bott, I know you remember what I said before; that I said that if I thought you condoned that kind of thing, I would devote my whole time in trying to blast the outfit out of existence.

"Now, I am not mean about this, except I tell you in all sincerity if there is ever a time on God's earth when the United States Government needs to make friends, it is now. And any man who goes around making good citizens mad and creating contempt for this Government is not a friend of the United States Government. I am very much concerned over this kind of a thing. * * *

For the information of the committee, I was first employed by the Board in November 1947, after the passage of the amended act. I have worked continuously for the Board since that time, except for 15 months when I was employed as Chief of Enforcement and Litigation for the Wage Stabilization Board, region 4, at Richmond, Va.; and as regional counsel at Richmond, region 4, of the National Production Authority, and acting regional counsel for region 3 at Philadelphia of the same agency. When the present regional office of the National Labor Relations Board was opened at Winston-Salem, N. C., I requested reinstatement with the Board, was accepted, and have been employed here at Winston-Salem since October of 1952.

It may be further of interest to the committee to know that I have lived almost all my life, except for 5 years of active service in the Navy during World War II, in the area served by the Winston-Salem office of the Board. I was born in Columbia, S. C., did undergraduate work at the University of South Carolina, and studied at the University of North Carolina, where I received my law degree. I am a member of the bar of North Carolina.

From the details set forth on February 24 and 25 by Representative Barden, I am sure he is referring to a conversation I had with a Mr. Peter Hooper, office manager of the Morehead City Garment Co., Morehead City, N. C. This conversation occurred on August 26, 1949, according to the transcript in the *Matter of Morehead City Garment Company, Inc.*, case No. 34-RC-150. I had been assigned to act as hearing officer in that case, and for a year or so thereafter, as a matter of fact, held almost every representation hearing in North Carolina. I might say that from that date, August 26, 1949, until February 23, 1953, as far as I know, no complaint was made as to my conduct in this matter or any other.

The case to which Mr. Barden has obvious reference to resulted from a petition for an election filed by the Amalgamated Clothing Workers of America, in which a hearing had been ordered to secure the necessary facts so that the Board might determine whether it had jurisdiction, whether a question concerning representation in fact existed, what the appropriate unit was, if any, and whether an election should be directed.

From the time of the filing of the petition, June 20, 1949, until notice of hearing issued on August 15, the field examiner, by numerous letters and telegrams, which exhibit the utmost in patience, attempted to obtain commerce data and, if possible, an amicable resolution of the question that had arisen as a result of the union's petition. When it appeared that the issues could not otherwise be resolved, notice of hearing issued. As the committee is undoubtedly aware, the Board customarily relies upon the cooperation of the company involved to submit sufficient data about its operations to enable the Board administratively, without a hearing, to determine the question of jurisdiction. Ordinarily, where such data is not supplied prior to the hearing, the company supplies such necessary

information at the hearing. It was my expectation, since appropriate commerce data had not been supplied, that this company would cooperate at the hearing, as was normal, by appearing and supplying the needed information. It was the failure of the company to appear at the hearing or offer any cooperation which led to my acquaintance with Mr. Hooper. My experience with him I set forth below.

A notice of hearing issued on August 15 in this case, setting hearing in the city hall at Morehead City, N. C., at 11 a. m. on August 26, 1949, and I was assigned as hearing officer.

There was no request for a postponement of the hearing set for August 26 and as hearing officer I appeared at the city hall, Morehead City, at the appointed time to conduct the hearing. There was no company official present and, after sitting in the hearing room for almost an hour, I called Mr. David C. Sachs, the chief law officer and my supervisor, in Baltimore, Md., and explained the problem of obtaining sufficient commerce data, as well as information about departments of the company, supervisors, etc., to enable the Board to decide whether or not to assume jurisdiction and, if so, over what. He advised me to go to the plant and see if the notice of hearing had been properly delivered or if anyone intended to represent the company at the hearing. I thereupon adjourned the hearing until 3 p. m.

I visited the company's plant, which was only a short distance from the city hall, on the off chance that Mr. Hooper, who had signed the registry return receipt for the notice of hearing, had failed to notify the proper parties. When I went into the company's office, there was only one person present, that I could see. I introduced myself to him as Miles McCormick, a representative of the National Labor Relations Board from Winston-Salem, and asked to see Mrs. Jackson. The person to whom I introduced myself did not give me his name at the time. He said that Mrs. Jackson was not there. I asked where she was and he said out of town. I then asked if there was any way I could reach her. He said that he did not think so. I asked then if she had been in the office or the plant that day and he said that she had not. I asked if she had been in the day before and he said that she had. I inquired if she did not leave word where she could be reached in the event of an emergency and he replied that she had not. I asked if Mrs. Jackson had received the notice of hearing and he said she had. I inquired why no one from the company was present at the hearing. Referring to the notice of hearing, he said, "Well, it didn't say we had to be there, did it?"

I then asked if I could talk with Mr. L. D. Dill, who, from my inspection from the unfair labor practice case file, I knew was the superintendent of the plant. The person to whom I was speaking told me that Mr. Dill was in Fort Jackson, S. C., on Army maneuvers. I asked who was in charge of the plant and he said that nobody was. I exclaimed, "You don't mean to tell me that a plant this size is completely without management?" He replied that it was. I then asked the person to whom I was speaking what his name was, and he said, "Peter Hooper." I asked him what job he held and he said, "Office manager." I then asked him if he would come down to the city hall at 3 p. m. that day and testify so that the National Labor Relations Board could get some information about the operation of the company's business. He said that he would not. I asked Hooper if I should be forced to subpoena him and he said, "Yes; you will." (In the excerpt it is stated that I said that I would have to drag Hooper down to the city hall. I did not say this but rather what I have set forth here.) I inquired if I could use his telephone and he granted the request. I thereupon called Mr. Sachs, and, when I learned he was not in, asked for and spoke to John A. Penello, regional director in Baltimore, Md. (In the excerpt, through error, it is stated I called Winston-Salem.) I informed the regional director that the president and superintendent of the company seemed to be out of town and those able to testify, although requested to appear, refused to come to the hearing. Mr. Penello advised me to return to the hearing and to get whatever information I could from whatever sources were available, and then to adjourn the hearing until Monday and to call him for further advice.

In the excerpts above it is stated that at some part of this conversation I "guessed I would put the squeeze on." I specifically deny I ever used the words "put the squeeze on" in this conversation.

After this telephone conversation with the regional director, I left the company's office and returned to the hearing room and reconvened the hearing at

3 p. m., August 26, 1949. At that time I read into the record the following remarks (p. 3) :

"Hearing Officer McCORMICK. The company, for the record, is not appearing.

"The hearing was recessed at 11 a. m. today until 3 p. m. today and the company has made no appearance at any time.

"The hearing officer went out to the plant and was informed that the only officials competent to testify were out of town and had been out of town for several days, that Mr. L. D. Dill is in Fort Jackson, S. C., on maneuvers and Mrs. Edna Jackson left for parts unknown yesterday and will return at a time indeterminate. The hearing officer at the company's office called the regional director in Baltimore and was instructed by the regional director to open the hearing and get such information as he could from whatever sources there were available and then to adjourn the hearing until Monday, whereupon he would discuss the matter further."

At 4 p. m., I recessed the hearings again until 10 a. m. Monday, August 29. This recess was in accordance with instructions from the regional director. That night I called the regional director at his home in Baltimore and reported to him what had taken place and asked for further advice. He told me that at the first available opportunity I should serve a subpoena duces tecum on Peter Hooper, the office manager, for certain records, and subpoenas ad testificandum on Mrs. Jackson and L. D. Dill, the president and the superintendent of the plant respectively. The next day, Saturday, August 27, I visited the company's plant, thinking that I might be able to see someone who might be working. The only person I saw was the watchman, who could tell me nothing. I also went to Mrs. Jackson's town residence several times but her house was closed and shuttered and no one appeared to be around, although there was an automobile in her garage. I learned in downtown Morehead City that Mrs. Jackson was over at her summer home on an island not too far distant from Morehead City. I went to the boat landing from which boats left the mainland to go to her island and a person there, whose name I do not recollect, told me that Mrs. Jackson had gone over to her island on August 25 and had not returned.

On Monday morning, August 29, I was at the plant about 7:30 a. m., with the subpoenas made out and ready to serve on the parties the regional director had directed service. I walked into the office and there saw Peter Hooper again. I asked him if he was Peter Hooper and he said that he was. I then handed him a subpoena duces tecum that required his presence at 10 a. m., that day at the city hall, Morehead City, N. C., and to bring with him all invoices and freight bills for the period January 1 to July 1, 1949. I then asked Mr. Hooper if Mrs. Jackson was present and he said that she was not. I asked him if she worked at the place and he said that she did. I gave him a subpoena ad testificandum directed to Mrs. Jackson to appear and testify at the same time and place. I then asked him if Mr. L. D. Dill worked at the plant and he said that he did. I handed him a subpoena ad testificandum requiring Dill's presence. After giving these three subpoenas to Mr. Hooper I walked out of the office without any further conversation.

At 10 a. m., that morning I reopened the hearing. The record of the remarks, as far as pertinent, are as follows (pp. 30, 31, 34, 35, 36) :

"Hearing Officer McCORMICK. The hearing will be in order. The hearing officer would like to state for the record that he stayed over in Morehead City during the weekend and visited the Morehead City Garment Co's factory once, and Mrs. Edna Jackson's residence several times in an attempt to get in touch with her and ask her if she would not cooperate with the National Labor Relations Board in attempting to resolve the issues in this case.

"Mrs. Jackson was not at her residence at any time the hearing officer went there, and no one at the plant except the watchman, who professed ignorance as to the location of any of the company's officials. But this morning before 8 o'clock the hearing officer under instructions from the regional director in Baltimore went to the plant again and there found a Mr. Peter Hooper who stated to the hearing officer that he was the office manager. The hearing officer thereupon served Mr. Peter Hooper with a subpoena duces tecum and ordered him to bring to the hearing at the courthouse, city hall, Morehead City, N. C., at 10 o'clock this morning all the freight bills for the period of January 1 to June 30, 1949, and all invoices from January 1 to June 30, 1949. For the record Mr. Hooper was served a subpoena personally by the hearing officer and at that time this morning the hearing officer served the subpoena on Mr. Hooper and left with Mr. Hooper subpoenas for Mrs. Edna Jackson and Mr. Lonnie Dill, that is Mr. L. D. Dill whose nickname is Lonnie Dill, both of whom were ordered to appear here at this place on this date at 10 o'clock a. m.

"It is now 5 minutes after 10 a. m., and as far as the hearing officer can determine neither Mr. Hooper with his records or Mrs. Edna Jackson with her personal presence nor Mr. L. D. Dill with his personal presence are in the hearing room.

"The hearing officer has expended considerable effort during the weekend and early this morning in a sincere effort to learn the whereabouts of any of these people but it is quite obvious that even those persons served who are in the city are not appearing and it is doubtful if anything further would be accomplished at this time in the proceeding by delaying it further, therefore the hearing officer will proceed without the cooperation of the company, or its officials or its employees, with the exception of those employees who have been subpoenaed and who have appeared.

"Hearing Officer McCORMICK. Excuse me, Mr. Sullivan, but the hearing officer notices Mr. Hooper has appeared. Mr. Hooper, will you take the stand?

"Mr. HOOPER. I didn't come here to testify; I can't testify; I haven't anything to say; that's not my place.

"Hearing Officer McCORMICK. You were ordered to be here. I see you have come in, and we would like for you to take the stand and answer a few questions.

"Mr. HOOPER. Well, I just can't testify. I haven't any right to appear here. I'm not running the company. There's nothing I can tell you.

"Hearing Officer McCORMICK. Well, I am sorry.

"Mr. HOOPER. I wasn't supposed to come here but after you come down to the plant I came by just to see.

"Hearing Officer McCORMICK. And so you refuse to take the stand for questioning?

"Mr. HOOPER. Well, you can ask me all the questions you want to but ain't nothing I can do, I can't answer them, you can ask them.

"Hearing Officer McCORMICK. Well, will you hold up your hand and be sworn?

"Mr. HOOPER. No, sir; I sure will not.

"Hearing Officer McCORMICK. You won't be sworn?

"Mr. HOOPER. No, sir; and I'll tell you why. I just can't tell you anything because what I might tell you might be wrong because I don't have anything to substantiate what I say with. I'm not the company.

"Hearing Officer McCORMICK. Well, you only have to tell the truth so far as you know it.

"Mr. HOOPER. No, sir; I'm not going to tell you anything. I'm not going to get up here and swear to anything. I'm not supposed to.

"Hearing Officer McCORMICK. It may be noted in the record that—by the way you are office manager out there, aren't you?

"Mr. HOOPER. I beg your pardon

"Hearing Officer McCORMICK. You are office manager of the Morehead City Garment Co., aren't you?

"Mr. HOOPER. Well, you can call it that if you want to.

"Hearing Officer McCORMICK. I don't want to call it anything but do you call it that?

"Mr. HOOPER. I don't have any title at all, I just look after the office. I haven't any right to come up here and tell anything and I'm not going to do it.

"Hearing Officer McCORMICK. The record may note that Mr. Peter Hooper appeared and refused to take the stand

"You may go if you want to, Mr. Hooper. You're at liberty to leave, but you don't have to, but we have no further need for you since you refuse to testify, but you are welcome to stay, of course. This is a public hearing and you can stay until it's completed but if you have other duties and would like to leave you will be at liberty to do so."

After closing the hearing that morning I returned to Winston-Salem. This ends, as far as I know or recollect, the circumstances surrounding the conversation Mr. Barden referred to in his comments when Mr. Herzog and Mr. Bott were testifying before the House committee on February 24 and 25

It is implied in the excerpts that there was a stenographer present at the time I was in the office talking with Mr. Hooper. As I have stated, the only ones in the office at the time that I could see were Mr. Hooper and myself. Certainly there was no one within my range of vision taking notes of what was said. That there was no stenographer present is borne out by the fact that I did not telephone Winston-Salem, as Mr. Barden was apparently informed, but Baltimore. If there had been a stenographer present certainly the fact that I called Baltimore rather than Winston-Salem would be revealed. Furthermore, the telephone records of the Winston-Salem office reflect that I did not call Winston-Salem on August 26.

Again, when the file contained many letters from the company with respect to the petition for certification, all signed by Mrs. Edna Jackson as the president of the company, I should not likely have asked after a "Mr. So and So," as the attached record indicates. As a matter of fact, I asked after Mrs. Edna Jackson, whom I well knew at that time to be the president of the company.

Furthermore, I have shown a statement of my version of the remarks made over the telephone to Mr. John Penello, regional director in Baltimore, whom I called from the company's office, and he has replied to me that he recalls the conversation and that my version coincides with his recollection of the conversation.

Regardless of the fact that a stenographic transcript is purported to have been made of this conversation with Mr. Hooper, I am sure that my version of the conversation is correct and, where the "stenographic transcript" varies from what I state I said, it is in error.

In addition to the substantiating factors above, I have my own memory to rely upon to assure me, and I hope the committee, that my recollection of an event almost 4 years old is a fairly correct version of what occurred. I am convinced Mr. Barden, at least in this particular, is relying upon information that is exaggerated and misleading.

I returned to Morehead City on or about September 6, 1949, accompanied by Mr. Raymond B. Therien, the field examiner in the Winston-Salem office, who had been assigned to investigate the charges that the company had committed unfair labor practices, to assist him in interviewing witnesses offered by the union in support of its charges. On September 6 I called at the company's office to see Mrs. Jackson in a further effort to obtain from her such commerce information as the Board would require in order to determine whether or not to assert jurisdiction. Mrs. Jackson was not in when I first went to the office, but I learned that she was in town that day and might be at the plant sometime during the day. Therefore, along with Mr. Therien, I waited outside the company's factory for about an hour and a half when finally Mrs. Jackson appeared. She was pointed out to me by one of the employees. Mr. Therien and I followed Mrs. Jackson into the plant.

In the office I introduced myself and Mr. Therien to Mrs. Jackson and we both offered her our identification cards, which identified us as Board agents. Mrs. Jackson looked at the cards and invited both of us into another office and then called Mr. L. D. Dill, the superintendent of the plant, to come into the office also. The four of us sat down at a table in the office and I asked Mrs. Jackson why nobody had appeared at the hearing to supply the Board with the necessary information about the company's operations. Mrs. Jackson said that the notice of hearing did not require her being present or anyone else from the company. I told Mrs. Jackson that, while it was true that the notice of hearing did not actually require her presence, the subpoena which I had served did require her to appear. I stated that Mr. Hooper apparently acting under instructions, had refused to give the Board any information, when he did appear at the hearing. (In the excerpt Mrs. Jackson states that I said that Hooper refused to testify "as he did not want to tell a lie." I did not say this although the reason advanced by Hooper at the hearing for refusing to testify was that he was not supposed to come to the hearing and did not want to tell what was wrong.)

Mrs. Jackson criticized me severely for subpoenaing Mr. Hooper, contending that he knew nothing about the business. I explained to Mrs. Jackson that I had subpoenaed only those people whom the regional director, my superior, had advised me to subpoena, when I had requested advice from him on the problem of the company's failure to appear at the hearing. The excerpts state that I said that I would subpoena anyone I pleased. I deny this.

I told Mrs. Jackson that this was the first experience I had had with a company that had utterly refused to give any cooperation whatsoever and that it was most difficult for me to determine what exactly should be done. I told her that the information that we had requested was needed and could be obtained if necessary by enforcing a subpoena requiring her to turn over her books for inspection. I said that, however, the information we wanted need not be specific but in only the most general terms. I was firm, nevertheless, that the information would be obtained one way or another, by her cooperation or by enforcement of a subpoena.

(The excerpts state that I said that I had taken enough insolence from the company; that this was the first time I had experienced such insolence; and that the next time I came I would have the power to get what I wanted; and that I inquired who the company thought they were fighting me and the United States

Government. I did not make such remarks. I never used the term "insolence" either with reference to myself or to the Government. I never inquired who the company officials thought they were, fighting me and the United States Government. I did speak to Mrs. Jackson as I have set forth above.)

After telling Mrs. Jackson that the information would be obtained one way or another, I suggested to her that I would assist in getting up the information if it was a matter of not having sufficient help. Mrs. Jackson refused my assistance and said that she would have to see her lawyer about the matter before she could give me any information. It was at this juncture, when I realized that I was not going to get any cooperation from Mrs. Jackson, that I stated in an undertone, more or less under my breath, with reference to Mrs. Jackson's statement that she would have to see her lawyer, "Well, it's damn near time."

Mrs. Jackson immediately took offense to the remark and I hastened to apologize to her. I said that the word had just slipped out almost without my being conscious of it and I hoped that she would not be offended. She refused to accept my apology but told me and Mr. Therien to leave her office. I apologized again and immediately left.

The excerpts state that I said to Mrs. Jackson, "You had better get the data and get it damn fast." I flatly, absolutely and unequivocally deny making this remark. I did use the word "damn" in the sense in which I have put it forth above, in a moment of exasperation and impatience, and I apologized to Mrs. Jackson for having made it in her presence.

Mrs. Jackson states that she believes the man with me when I was in her office was Mr. Sullivan, the union organizer. As I have said above, the person with me was not Mr. Sullivan but Mr. Therien of the Board. He introduced himself as such to Mrs. Jackson and Mr. Dill and Mrs. Jackson inspected his identification card.

Mrs. Jackson accused me and Mr. Therien of being "uncouth" in dress. I think both of us had on sport shirts without ties buttoned at the neck and was either wearing our coats or carrying them on our arms. Morehead City is a beach resort and fishing village on the Atlantic Ocean. The time of year was early September and the weather was broiling hot, even in the shade. Both Mr. Therien and I had stood in front of the factory in the sun for over an hour, and it may be that we did show some signs of the effects of that. However, I deny that we were not dressed suitably. In fact, we were considerably more heavily dressed than most people in that locality at that time of year. Mr. Dill, as I recall had on a short-sleeved sport shirt open at the neck.

The above is my recollection of the visit Mr. Therien and I made to the plant on September 6, 1949. While it does not vary greatly from Mrs. Jackson's version, it is my conviction that it more nearly reflects what occurred than Mrs. Jackson's.

As I have stated above, in addition to being employed as a Board attorney I have acted in executive capacities in the Wage Stabilization Board and in the National Production Authority. In these capacities, as well as in the capacity of a Board attorney, I believe I have performed my duties in the best interests of the Government, and with due regard to the rights of all parties with whom I have had to deal. I certainly never recall being criticized before for discourtesy.

I sincerely appreciate the opportunity the committee has afforded me to reply to the remarks attributed to me. If there is any further information which the committee deems it to its advantage to request of me, I shall be most happy to supply it if I am able.

Yours most respectfully,

MILES J. McCORMICK, Attorney.

SAN FRANCISCO 21, CALIF., May 12, 1953.

HON. JOHN O. GRAHAM,
Chief Clerk, Committee on Education and Labor,
House of Representatives, Washington, D C

SIR: My attention has been called to certain testimony of Mr. Lawrence B. Gilbert, who appeared before the committee in connection with a proceeding entitled "A. L. Gilbert Co., Case No. 20-CA-746". I am Robert J. Scolnik, a field attorney attached to the Twentieth Regional Office of the National Labor Board, with headquarters in San Francisco, Calif. I was one of the attorneys assigned to try the above-mentioned case, and Mr. Gilbert makes certain allegations in his testimony commencing on page 5624, in reference to me which are of an extremely serious nature, and which are untrue.

Mr Gilbert charges me, in effect, with bribing witnesses in that "several of (his) employees were told by attorneys for the National Labor Relations Board that if they testified right they would surely be granted pay for the time they had been off the job," and, more particularly, that I promised witness Harvey Dickerson that if he would change his previous testimony he would receive \$500 in back pay. He seeks to substantiate the latter charge by submitting to the committee a presumably sworn statement signed by Dickerson.

It should be noted that Mr. Gilbert's general allegation is pure hearsay not even supported by the names of the employees who supposedly gave him the information. I hereby deny generally and specifically that at any time during this proceeding or at any other time I ever told any witness named or unnamed that he would be granted "pay for the time (he) had been off the job" * * * "if he testified right." Mr. Gilbert's testimony in this regard challenges my integrity as an individual and as a lawyer, and Mr. Gilbert's failure to be specific makes more than a general denial impossible. If he will produce the names of employees and give the details of the alleged incidents, I would welcome the opportunity specifically to refute the charges.

With respect to the specific allegations regarding Dickerson, the facts are as follows:

1. Mr. Dickerson was one of the individuals named in the complaint in the above-entitled proceeding as having been discriminated against by the A. L. Gilbert Co. In support of the allegations of the complaint, I put Mr. Dickerson on the stand as my witness in the General Counsel's case in chief. Mr. Dickerson gave certain testimony regarding the circumstances surrounding the company's failure to put him to work immediately upon his return from a vacation.

2. On defense, employer's counsel called Mr. Gilbert, who testified concerning his failure to put Dickerson to work at once. The record will substantiate the fact that Mr. Gilbert's testimony as to his conversation with Dickerson is substantially the same as that given by Dickerson except for one particular. Mr. Gilbert testified that when he related to Dickerson why no job was available to him at the time, Dickerson agreed to wait until an opening developed before returning to work. In his testimony Dickerson had not testified as to whether or not he so agreed.

3. I concluded that the question of Dickerson's so-called agreement might have a bearing upon his case. Dickerson had been present during Mr. Gilbert's testimony, and I approached him and asked whether or not he had in effect agreed with Mr. Gilbert as Mr. Gilbert had testified. He stated that he had stated to Mr. Gilbert, "Well, if that's the way it is," but that he had not intended by this remark to signify his agreement. I thereupon told him I would call him on rebuttal to testify on this one issue alone. Mr. Dickerson expressed to me at this time some confusion as to the issues of the proceeding and its possible effect on him. I thereupon explained to him that we had alleged that he had been discriminated against, that the employer denied it, and that it was for the Board to determine from the testimony given on both sides whether or not he had in fact been discriminated against in violation of the law. I went on to state that if he were found by the Board to have been discriminated against, the usual Board remedy was reinstatement and making the employee whole for any losses which he had suffered as the result of the discrimination, and that normally this was what he would have earned at the company less what he earned elsewhere during the period of the discrimination. I explained to him that it was our obligation to present all the evidence available, and that I was interested only in obtaining the true facts. Dickerson repeated that what he had told me was the truth. I wish to state that at no time during this conversation did I ask him to change any testimony previously given and that at no time did I state that he would receive back pay for any testimony which he might give.

4. The following morning I called Dickerson upon rebuttal. An examination of the record will show that the only questions which I asked Dickerson concerned the so-called agreement above noted, and that the only testimony sought or obtained concerned what he told Gilbert. Dickerson's testimony was in exact accord with what he had told me were the true facts the night before. Without quoting fully the cross-examination, I do wish to call to your attention one question asked by counsel for respondent:

"Q (By Mr. Ackley) Mr. Dickerson, have you had any conversation with Mr. Scolnik regarding what your testimony should be in this case? A. Well, not exactly what it should be. *He just asked me last night some questions, but he never told me to say anything.* [Italic supplied.]

On my redirect examination, I asked Mr. Dickerson the following question: "Q. In that conversation I had with you last night, Mr. Dickerson, didn't I tell you that if the final decision in this case was to the effect that the Gilbert Company had unlawfully denied you a job, that you might have back pay coming?—A. That is right, yes, sir."

Since the charge against me is of such a serious nature, I wish the committee to consider carefully the testimony of Mr. Gilbert before it, and, in particular, to note the affidavit of Mr. Dickerson submitted to the committee as opposed to both my version of the meeting with Dickerson during the hearing and the sworn testimony given under oath by Dickerson at the hearing. Not only do I deny with all the power I can command that at any time I sought to get Dickerson to change his testimony, but indeed, my denial is corroborated by Dickerson, himself, when under oath, in response to the question put to him by respondent's counsel, he stated, as noted above, "He just asked me last night some questions, but he never told me to say anything." The purported affidavit of Dickerson submitted to the committee by his employer was obtained under circumstances which have not been disclosed, and was submitted after his sworn rebuttal testimony which was given in the presence of the company's counsel who had full opportunity to cross-examine. I submit that such sworn testimony provides a positive and ample refutation to the charges now made by the employer, Mr. Gilbert.

With respect to the accusations of improper conduct in the examination of witnesses and introduction of exhibits, I respectfully invite the committee to read the entire transcript of the proceedings which, I believe, fully refutes these allegations and makes any comment by me unnecessary.

I realize that my reply to the charges made against me, as submitted in this fashion, lacks the force of an oral presentation. I can only say that I would welcome an opportunity to appear before the committee and submit to any question its members might wish to ask if further clarification of this matter is desired.

Respectfully,

ROBERT J. SCOLNIK, *Attorney.*

NATIONAL LABOR RELATIONS BOARD,
Cincinnati 2, Ohio, May 12, 1953.

Re Dunbar Glass Corp., case No. 9-CA-606, testimony of Henry E. Payne, president, before the committee, May 5, 1953.

Mr. JOHN O. GRAHAM,
*Chief Clerk, Committee on Education and Labor,
House of Representatives, Washington, D. C.*

DEAR MR. GRAHAM: The undersigned field examiner is deeply grateful to the committee for permitting this reply to be filed in order to present factually certain phases of this case.

On October 15, 1952, the American Flint Glass Workers Union of North America filed a charge¹ against the above-named employer alleging violations of sections 8 (a) (1), (3), and (5) of the act, in that the employer discriminatorily discharged one Randall C. Davis because of his activities on behalf of the union and further alleging that the employer, on October 6, 1952, and thereafter, refused to bargain with the union. In accordance with the usual practice in the regional office, the employer was notified, by letter, on October 15 that the charge had been filed and assigned to me for investigation. This letter also requested that the employer furnish a full and complete written account of all the facts and circumstances as he knew them surrounding the matters complained of in this charge.

As my caseload permitted, I began investigation of this case on November 17, 1952. I had made arrangements to meet with a representative of the charging party on November 17, 1952, and to meet with representatives of the employer on November 20, 1952. This is in accordance with our practice of permitting all parties to furnish such evidence or leads to evidence as they may have in support of their respective positions.

¹ These charges were later amended on December 1 and 4, 1952, to add an allegation of the refusal to reinstate certain strikers and to correct the name of the union. As noted below I did not participate in any manner in this case after December 4, 1952.

I arrived in Charleston, W. Va., on the afternoon of November 17, 1952. The union representative, a Mr. R. K. Ritchie, had made arrangements for me to use the city hall at Dunbar, W. Va., for the purpose of interviewing witnesses furnished by him. I interviewed approximately 22 such witnesses. Only the persons interviewed were present during the interviews. Sworn statements were taken from all of these persons.

On either Wednesday or Thursday evening, I do not recall which, I also made visits to the homes of 2 or 3 persons suggested as witnesses by Mr. Ritchie. Although Mr. Ritchie pointed out the homes of these persons, he was, of course, not present during the interviews.

In accordance with the previous arrangements, I appeared at the office of Mr. John V. Ray, the attorney for the employer, on the morning of November 20. At that time, neither Mr. Henry E., nor Mr. B. C. Payne had arrived. Prior to the arrival, Mr. Ray informed me that he was aware of the fact that I had been in Charleston interviewing the various striking employees. I told Mr. Ray that this was true, that I had been in the area for this purpose, and that doing so was in accordance with our investigatory practice to afford the charging party an opportunity to present evidence in support of its charges. Mr. Ray then asked me what information I had obtained so far in the investigation of the allegations contained in the charge. I advised Mr. Ray that all evidence received during the informal stages is held in confidence between the Board and the person furnishing such evidence. I advised Mr. Ray that my sole purpose now was to afford the employer an equal opportunity to furnish any evidence or leads of evidence that it desired to support its position. I further advised Mr. Ray that we desired, if at all possible, to obtain such evidence in affidavit form. At this point, Mr. Ray remarked: "We weren't born yesterday," and further stated that perhaps it would be best not to discuss the case, and that the company would see me at the trial. I advised Mr. Ray that the employer was not in any way obligated to furnish any information if he did not care to do so. Mr. Ray then told me that he would call Mr. Henry Payne and speak to him about the matter. In my presence, Mr. Ray called Mr. Henry Payne and advised him that I was at the office for the purpose of discussing the charges, and asked Mr. Payne to come over. At this point, Mr. Ray made some remark to the effect that he wanted to check his mail, and I advised him that I would be glad to wait in the outer office if he so desired. Mr. Ray then showed me to the conference room and asked me to wait there.

A short time later, Mr. Henry Payne and Mr. B. C. Payne arrived at the law office and came into the conference room. After a few minutes of general discussion on such matters as the weather, Mr. Ray asked the Messrs. Payne into his office. A short time later, Mr. Ray, Henry and B. C. Payne returned to the conference room and I generally informed them as to the purpose of my visit and advised them that, if agreeable, I would like to obtain their statements as to the facts surrounding this case. We began at first a discussion on the refusal to bargain charge, and I prepared to take notes on the discussion. At this point, Mr. Ray informed me that there would be no need for me to take any notes since a complete factual typewritten statement would be furnished to me before I left the office. I, therefore, did not take any notes. A general discussion of the facts and issues involved in this case continued until about noontime. After a recess for lunch we resumed the discussions which lasted until approximately 4 p. m. At Attorney Ray's invitation, I ate lunch with Attorney Ray and Messrs. Henry and B. C. Payne. There was no discussion of the case during lunch.

During the afternoon session I asked for facts on various points. The employer's representative indicated at various points that they had specific information from specific individuals which would support their position. I asked for the names of these individuals. They offered to divulge the names of such persons only on condition that I would not attempt to interview them during the course of my investigation. I advised them that I could not agree to these conditions since I would be compelled to interview any person if I believed that that person's testimony would be material to the issues involved. In view of this, they did not supply me with the names of any such persons.

Shortly before the afternoon conference was over, I was advised by Mr. Ray that since the information I requested was somewhat voluminous, he stated it would be advisable to submit it at a later date. At his request, I gave him a brief outline of the information I desired. Mr. Ray agreed to furnish this information to the regional office by November 28, 1952. The conference was then concluded and I left Mr. Ray's office.

On December 4, 1952, the information which I had discussed with the company had not been received. I, at that time, prepared a report to the regional director on the facts and issues as reflected by the file at that time.

I did not thereafter further participate in any way in the handling of this case, except on December 23, I received a telephone call from Attorney Ray asking for an extension of time in which to furnish the information which we had discussed on my visit to the employer's attorney. Since the case had been transferred from me at that time, I referred the call to George M. Dick, then acting as chief field examiner in the regional office. During this conversation I did advise Attorney Ray that I felt compelled to make a recommendation that a complaint issue on the basis of the evidence that I had without waiting for an additional period of time to receive the information which the employer was to furnish. Although I had no further participation in this case, it appears to me that the above is meaningless unless a short factual statement, reflected by the file, as to the further processing of this case is included.

The file indicates that Field Examiner Dick granted the employer an extension of time to January 7 to furnish the information discussed above. On December 29, 1952, Dunbar Glass Corp. filed a charge alleging that the union had violated section 8 (b) (1) (A), (3) and section 8 (d) of the act, in that the union had engaged in mass picketing, threatened physical violence, assaulted employees, damaged homes of employees and engaged in repeated acts of intimidation and secondary boycott. The charge alleged a refusal to bargain in good faith with the employer within the 60 days after June 2, 1952. This charge was docketed and assigned to me for investigation. On December 31, I caused the following telegram to be sent to the employer's attorney:

"Re American Flint Glass Workers Union of North America (Dunbar Glass Corp.), case No. 9-CB-165, it appears that the issues involved in the instant case are the same as those issues involved in case 9-CA-606 which we discussed at our conference on November 20, 1952. Inasmuch as time was too short to enable you to furnish me with a detailed written answer at the conference you stated that you would submit in writing your statement by November 28, 1952. You later contacted Field Examiner Dick of this office and agreed to submit this material by January 7, 1953. In view thereof we will expect the receipt of this material by this date which will be regarded as your statement of position to case No. 9-CA-606 and as the supporting evidence in case No. 9-CB-165. Please submit any other evidence that you may have in respect to these cases at this time."

I did not participate in case No. 9-CB-165 thereafter. Both cases were, at that time, transferred to Richard C. Curry of this office for additional processing. The file indicates that on January 7, the employer requested of Attorney Curry an additional extension of time in which to present evidence in support of its charge and in defense of the union's charge against it. Arrangements were made between Attorney Curry and Attorney Ray for the submission of the material prior to January 14, 1953, and for a conference between the two at the regional office on January 14. The file further reflects that as a result of this conference a bilateral settlement agreement was entered into between the employer and the union in case No. 9-CA-606, approved by the regional director on February 6. Case No. 9-CB-165 was dismissed by the regional director on January 28, and there was no appeal to the Office of the General Counsel of the regional director's refusal to issue a complaint, pursuant to section 102.19 of the Board's Rules and Regulations.

Files in the regional office further reveal two additional cases growing out of this general situation. These cases are 9-RD-112 which was filed by Mr. Henry M. Crowder, asking that the Flint Glass Workers Union be decertified as the representative of the employees of Dunbar Glass. This case was filed on October 13, 1952 and was dismissed on October 30, 1952, because of the failure of the petitioner to demonstrate an interest on the part of a substantial number of the employees involved. No appeal was filed pursuant to section 102.63 of the Board's Rules and Regulations. This case was not assigned to me and I did not participate in it.

On February 27, 1953, another decertification petition was filed (case No. 9-RD-119) by the employees' committee of Dunbar Glass Corp. This case was dismissed on March 2, 1953, by the regional director because of the settlement agreement mentioned above which provided that the employer shall bargain collectively with the union. An appeal of this dismissal was taken to the Board on March 26, 1953. The Board sustained the regional director's dismissal of this case. Again, the undersigned did not participate in the handling of this case, and it is mentioned only to give the committee a view of the entire series of proceedings involved in this situation.

Sincerely yours,

GEORGE LOVERDE, *Field Examiner*

NATIONAL LABOR RELATIONS BOARD,
Seattle, Wash., May 12, 1953.

JOHN O. GRAHAM,

*Chief Clerk, Committee on Education and
Labor, House of Representatives, Washington, D C*

DEAR MR. GRAHAM: I have been informed by Mr. George J. Bott, General Counsel of the National Labor Relations Board, that the House Committee on Education and Labor has extended to me the opportunity to answer the criticisms of me made by Mr. Cyril W. Radcliffe before the committee on March 27, 1953. This letter is in response to that invitation.

I am Howard E. Hilbun, field examiner, stationed in the 19th region with offices at 407 United States Courthouse, Seattle, Wash. I was born at Hattiesburg, Miss., January 26, 1902. After completing my education in Mississippi and Alabama I did corporation and public accounting until 1936, when I went with the Social Security Agency's Accounts and Audits Division as an auditor. In 1940 I transferred to the Wage and Hour Division of the United States Department of Labor and was senior inspector in charge of the Boise, Idaho, office until the latter part of 1946. After leaving the Department of Labor I was employed as a labor specialist, chiefly as a mediator in the Wyatt housing program, until January 1948, when I started on my present job.

Mr. Radcliffe's main criticism seems to be that I made no attempt to get the company's side of the story and, indeed, interviewed only three disgruntled employees. Specifically, on page 1941 of the printed record he testified that—" * * * the union proceeded to file charges against us that we had discharged three men for their attempt to organize a union.

"The Government immediately sent an investigator down from Seattle to investigate these charges. How does the NLRB investigate?" This Government man came straight to union headquarters in Boise and asked for the details of the dispute. So the union told them the story—their side of it. Then in the evening they brought him out to Homedale and let him talk to these three men who had been discharged. Naturally these men were disgruntled and their story jibed with the union's right down the line.

"We have a rather peculiar geographical situation in Homedale. As I mentioned we are located on the south bank of the Snake River, and about the only way you can get into Homedale from Boise is to cross the big bridge at Homedale, the big bridge over the Snake River, and my store sets right at the end of the bridge.

"In other words, the only way you can get in and out of the town is to go directly in front of the store. However, as many times as that Government investigator went back and forth through there, *never once did he ask to talk to any of my employees other than the three who had walked off the job. Never once did he set foot inside the door to see what kind of a place of business we operated. Never once did he ask to meet the management he was prosecuting.* He was satisfied that the union's story was the whole story and he went back to Seattle and prosecuted the case on that basis." [Emphasis supplied.]

Again, on pages 1955-1956 Mr. Radcliffe said that I never made any attempt to contact him. He testified that—

"In other words, [Hilbun] says he tried to see me, but referred him to my lawyer. My partner was in Illinois on his vacation; we take our vacation in the wintertime in the implement business, and he has never to this day ever seen the field examiner. I saw the field examiner on one occasion only when he came to Homedale on December 22 to conduct the election. They arrived at 8 in the morning with the union organizer. They conducted the election, and he left immediately. I was hoping that I would have a chance to discuss some of the details of the case. They left immediately. They got in the union organizer's car and went back to Boise, and that is the only time in my life I have ever seen the field examiner. At no time has he ever written me a letter or phoned me or asked to come in and see me. He says, if you will allow me, he says that he tried to contact me."

The unfair labor practice charge in question (19-CA-542) was filed with me in the field on July 14, 1951, and was docketed by the Seattle regional office on July 17, 1951. On July 14, 1951, I was in Boise, Idaho, on another matter and I went to the union's business representative who is stationed in Boise and asked him for evidence to substantiate the charges. He gave me a list of names containing 8 of the 11 employees working in the unit the union was claiming to represent, and stated these employees would substantiate the charges filed by the

union. I had come to Boise by plane and I asked the business representative if he could drive me to Homedale, about 50 miles from Boise, to interview these witnesses. That same evening the business representative took me to Homedale and assisted me in locating the employees of the company. I privately interviewed seven of the employees that evening and took statements from them. The union representative was not present during these interviews, in accordance with my customary practice. I tried to see two other employees that night but they were not available.

The next day I discussed the charges with Eli A. Weston, attorney for the company. Mr. Weston is an attorney specializing in labor relations who handles a majority of the NLRB cases filed in southern Idaho. We have dealt with him for 12 years. He has insisted that we contact him before talking with any of his clients who are charged with unfair labor practices and that we not talk to his clients unless he is present.

I informed Mr. Weston that I would be back in Boise within the next week or 10 days and requested that he make arrangements for a conference with his clients or give me a statement of the company's position. Mr. Weston agreed to do this.

On July 17, 1951, the region sent a letter to the company, attaching a copy of the charges and requesting a statement of the company's position.

On July 24, just 1 week after the charges were docketed by the regional office at Seattle, I was again in Idaho, working on another case at Caldwell, Idaho, about 25 miles from Homedale. I called the company long distance and asked to speak to Mr. Radcliffe. I was informed he was not in and I then asked to speak to Mr. Mancke, the other partner. I told Mr. Mancke that I had talked to Mr. Weston and requested that he arrange a conference. He said I would have to ask Weston about that. I told Mr. Mancke I would like to discuss the charges with him and Mr. Radcliffe and requested that he set a time for a meeting. Mr. Mancke told me I would have to see their attorney, Eli A. Weston, of Boise, and went on to say that Mr. Radcliffe was at that time in Boise discussing the case with Mr. Weston.

I drove from Caldwell to Boise, a distance of 30 miles, and contacted Attorney Weston. Mr. Weston informed me that Mr. Radcliffe had gone. I again discussed the charges with Mr. Weston and again requested that he arrange a meeting with his clients in order that I might get their position and discuss the situation with them. Mr. Weston said, "That won't be necessary as I have already told you the company's position; this is one case we can beat you on." I asked Mr. Weston if he would send me a letter setting forth the company's position and he agreed to do so. On that same day Mr. Weston addressed a letter to me at the regional office in Seattle which I quote below:

ELI A. WESTON,
Attorney at Law,
Boise, Idaho, July 24, 1951

Re Homedale Tractor & Equipment Co. Case No. 19-CA-542.

Mr. HOWARD HILBUN,
National Labor Relations Board, Seattle, Wash.

DEAR MR. HILBUN: I have been asked to answer your letter dated July 17, addressed to the Homedale Tractor & Equipment Co., pertaining to the charge filed in the above case.

I believe I have already discussed this case with you informally in my office, and I think you know the company's position with reference to this charge.

I believe, too, the employees Ernest Runger and Jess Runger have been re-employed inasmuch as there seemed to be a misunderstanding on their part as to why they were laid off. I believe the employee Watkins was only hired on a temporary basis, and the employees Snyder and Maybon, were discharged for cause. Among other things, I think you know they quit their services without notice and were absent for an entire day without an excuse.

There has been no refusal to bargain inasmuch as the employer has not been notified, nor has any proof been submitted to show that the union represents a majority of the employees, or any of them, and, of course, the company will insist upon an election on this question.

Yours very truly,

E. A. WESTON

E. A. W:NS
C.C. Mr. C. W Radcliffe

Mr. Radcliffe stated that I interviewed only three disgruntled employees and based my recommendation on their testimony. He implies that there were only 3 involved in the charge, when actually 5 employees were involved, as can be seen from Mr. Weston's letter, and the later findings of the trial examiner and the Board. The facts of the matter are that I interviewed 7 out of 11 employees and tried to interview 2 of the remainder.

On pages 1955 and 1956, Mr. Radcliffe testified as follows:

"I saw the field examiner on one occasion only when he came to Homedale on December 22 to conduct the election. They arrived at 8 in the morning with the union organizer. They conducted the election, and he left immediately. I was hoping that I would have a chance to discuss some of the details of the case. They left immediately. They got in the union organizer's car and went back to Boise, and that is the only time in my life I have ever seen the field examiner."

Again on page 1957 of the record, the following exchange took place between Congressman Landrum and Mr. Radcliffe:

"Mr. LANDRUM. In the early part of your last remarks, you made a statement that the Government official, the investigator or trial examiner or whoever he was, came to your place with the union organizer.

"Mr. RADCLIFFE. That is right, sir.

"Mr. LANDRUM. And that upon completion of the election the Government employee left in an automobile belonging to the union organizer.

"Mr. RADCLIFFE. That is right, sir.

"Mr. LANDRUM. Riding with him?

"Mr. RADCLIFFE. Riding with him. They walked directly from the voting room right straight out the front door, and I was standing right there hoping that I would have a chance to talk to him. They went right out the door and they went uptown together, got in a union organizer's car, went uptown and had a cup of coffee and about a half hour later they went out of town. That is the only time I have seen that man who was prosecuting charges against me.

"Mr. LANDRUM. That was at the town of Caldwell?

"Mr. RADCLIFFE. The election was in my store.

"Mr. LANDRUM. They were leaving Homedale and going back to Boise

"Mr. RADCLIFFE. That is right.

"Mr. LANDRUM. The Government man and the organizer.

"Mr. RADCLIFFE. That is right.

"Mr. LANDRUM. Did you supply the committee with the date?

"Mr. RADCLIFFE. The date of the election was December 22, 1951."

On page 1942, Mr. Radcliffe gave this testimony:

"Right up to the time that any of your employees go up to cast his ballot, if they challenge that man, his ballot is placed in an envelope and his name signed on the outside. *One of my men was considered to be a known antiunion vote, so they challenged him.* I stood there and argued with the Government man for half an hour as to whether this employee was going to have to sign his ballot or not. I pointed to this notice which was still hanging there on the shop wall and I said, 'For 2 weeks you have been promising these men a secret ballot. This morning you tell this man he has to have his name on it.' * * * Nevertheless, after half an hour of futile argument the Government man said 'If your man wants to vote, he is going to have to have his name on it.' And that is what he did."

With respect to the challenged ballot criticism, Mr. Radcliffe implied that I challenged the eligibility of a voter. This is not the case. At 7:30 a. m., December 22, 1951, I held a preelection conference with Mr. Radcliffe of the company, Mr. Walker of the union and the company and union observers. I did not arrive at the company with any union representative. Among other things, we went over the list of eligible voters submitted by Mr. Radcliffe, as is customary. Mr. Jess Runger, an employee of the company and observer for the union, questioned the eligibility of Howard Wilkin, on the ground that he was a foreman and a supervisor, and was therefore ineligible to vote. Mr. Runger stated he would challenge Mr. Wilkin's ballot on those grounds. I explained that if agreement on the voting list could not be obtained, either observer had the right to challenge the vote of any employee if he had reason to believe that such employee was not eligible under the provisions of the Agreement for Consent Election signed by the parties. I explained further that challenged ballots would only be passed upon if they were sufficient in number to affect the results of the election. This is in accordance with the rules and regulations of the Board and is established procedure.

Mr. Radcliffe was not satisfied with the explanation and a heated argument between Mr. Radcliffe and Mr. Runger, the union observer, ensued. Although I tried to calm the discussion, both Mr. Radcliffe and Mr. Runger indulged in personalities and accused each other of having ulterior motives as a basis for their respective positions. No agreement was reached, and therefore it was necessary to use the standard challenge procedure as would have been used had Mr. Radcliffe desired to question anyone's eligibility.

At this meeting Mr. Radcliffe denied that Mr. Wilkin was a foreman which position seems to be contradicted by his testimony before your committee and recorded on page 1947, where Mr. Radcliffe stated:

"When we first received this letter from the union it came as a complete surprise to us. The first thing I did, *I went back to my shop foreman and said 'Howard, what does this mean to you?'* He looked at it and said, *'I haven't the faintest idea. It looks like they are trying to organize the place'*" [Emphasis supplied.]

Answering Mr. Radcliffe's testimony concerning my riding with the union organizer, I did not go to or leave Homedale or the election in the car of the union organizer. I had left my Seattle office several days before December 22, 1951, in my own car and had investigated a case in Riggins, Idaho, a logging camp which required the use of my car instead of traveling by public carrier. I had also conducted another election in Boise, Idaho, on December 21, 1951. I drove my own car to Homedale early the morning of December 22, and parked at the side of the company's shop and entered and left the premises through the rear shop door. I did not leave the company premises with the union organizer, but remained after the observers and union organizer had left, and talked briefly with Mr. Radcliffe who told me, "I hope you will pardon my outburst in the preelection conference and the things I said, but this election is very important to me and I had a lot at stake." I told Mr. Radcliffe that we were accustomed to hearing heated arguments and to think nothing of it. I shook hands with Mr. Radcliffe and left by the shop door, got into my car and drove uptown to a restaurant and had breakfast. I then got in my car and drove to Seattle and did not return to Boise. This travel can be confirmed by my expense voucher for the month of December 1951, submitted just after January 1, 1952.

In sum, Mr. Radcliffe's testimony that I did not try to get the company's story; that I interviewed only 3 employees; and that I went to and left the election with the union organizer, is not borne out by the facts.

I appreciate the opportunity the committee has given me to present my side of this story and to answer criticisms which I believe the facts show are unjustified.

Very truly yours,

HOWARD HILBUN, *Field Examiner.*

SAN FRANCISCO, CALIF., May 12, 1953.

COMMITTEE ON EDUCATION AND LABOR,

House of Representatives, Washington, D. C.

(Attention: Hon. John O. Graham, Chief Clerk.)

GENTLEMEN: I am an attorney with the National Labor Relations Board in its regional office located in San Francisco, Calif.

On April 23, 1953, Ross E. Thoresen, manager, Industrial Relations Council of Utah, testified before the Committee on Education and Labor of the House of Representatives. I understand that no provision has been made for persons named in testimony such as that given by Mr. Thoresen to appear and testify by way of answer. Because of that, I would like to call the committee's attention to the following statements made by Mr. Thoresen, which are untrue in fact.

Mr. Thoresen testified that, in a case in which he represented the respondents, I told them that they "had better accept a settlement stipulation," a consent decree against them, and post a notice in the plant. This testimony appears at page 5461 of the transcript. I believe that the fair intendment of this testimony would lead one reasonably to believe that attempts had been made to bring pressure upon or to force the respondents to enter into a settlement stipulation. To the extent that the testimony was so intended or may be so construed, it is untrue.

The case referred to by Mr. Thoresen is that of Cache Valley Dairy Association and Edwin Gossner, 20-CA-674. In that case, in accordance with general practice, the respondents were given an opportunity voluntarily to comply with the

law before complaint was issued, and before I had had any connection with the matter. They declined to do so.

Thereafter, and shortly before the hearing, discussions looking toward possible settlement of the issues were held. They occurred upon the suggestion and at the request of M. C. Harris, who, together with Mr. Thoresen, represented the respondents at the hearing. Two conferences dealing with the problem of possible settlement were held. Mr. Thoresen's sole participation was limited to the last 15 or 20 minutes of the second conference. Neither then nor at any other time were the respondents told directly or by implication that they "had better accept a settlement stipulation."

Mr. Thoresen further testified that when the respondents resisted, I stated, "You are going to be surprised at the evidence we are going to put in." This testimony appears at page 5462 of the transcript. Here again the purport of the testimony would appear to be that information to which the respondents would legitimately be entitled was withheld from them and a threat was made that they would be confronted with evidence of a surprising and unrevealed nature unless they capitulated to demands of settlement. The facts, however, are to the contrary.

At one point during the settlement conferences preceding the hearing, the parties discussed that part of a proposed notice which dealt with threats by Respondent Gossner to discharge employees because they had engaged in union activities. Mr. Harris stated that he did not think Respondent Gossner had threatened any of the employees and that he would be surprised if such evidence existed. I answered that he might be surprised but that we did have such evidence in our possession and that the provision in the notice which was being proposed was based upon that fact.

Mr. Thoresen also testified that I acted as hearing officer in certain cases involving the teamsters' union and that I telephoned the regional director and was told by him to dismiss the petitions filed by the employer without holding an election. The testimony in question, which appears at page 5469 of the transcript, is untrue. Milen Dempster, field examiner connected with this office, and not I, acted as hearing officer in the cases in question.

I respectfully request that this statement be included as part of the record of the hearings before the committee.

Very truly yours,

DAVID KARASICK.

SAN FRANCISCO, CALIF., May 11, 1953.

Hon JOHN O. GRAHAM,

*Chief Clerk, Committee on Education and Labor,
House of Representatives, Washington, D. C.*

SIR: I am a field examiner with the National Labor Relations Board attached to the Twentieth Regional Office with headquarters in San Francisco, Calif. My attention has been called to certain testimony given by Mr. Lawrence B. Gilbert before the committee in connection with a proceeding entitled A. L. Gilbert Co., case No. 20-CA-746. In his testimony commencing on page 5620 of the transcript, continuing through page 5622, Mr. Gilbert makes certain statements concerning my participation as a Board agent in this case which I regard as highly inaccurate. It is my desire by this letter to submit to the committee my own statement of the facts as they occurred.

In substance, Mr. Gilbert alleges that I summoned the employers to appear before me in San Francisco; that I forced Mr. Gilbert to answer leading questions; that I attempted to build the case for the union; that I was reprimanded by Mr. Gilbert's representative for my conduct; that I showed bias by stating that I would amend the charges so that they would stick; that I told Mr. Gilbert he had to sign a statement which I had taken during a conference; and that I refused him opportunity to take my notes and correct them.

1. I was assigned as the field examiner to investigate the charges filed by the teamsters union in the above-noted case. As is customary in any investigation, I first sought evidence from the charging party to ascertain whether or not sufficient evidence could be adduced to establish a prima facie case. Having satisfied myself that a prima facie case could be established, I then approached the employer charged with violating the act as the next step in the investigation, to obtain his version of the story. In this connection I approached Mr. Lawrence Gilbert on September 5, 1952, at his office in Oakdale, Calif. Mr. Gilbert declined to discuss the matter with me at this time, stating that he wished his representa-

tive, W. M. Caldwell, of the California Association of Employers, to be present. At that time, we arranged a meeting in San Francisco for September 10. Later, Mr. Caldwell advised me of his unavailability at that date and the meeting was finally scheduled for September 11, 1952. Under the circumstances, it is quite clear that Mr. Gilbert was not, as he testified, summoned to appear before me but that the meeting was arranged by mutual consent to suit his convenience.

2. The purpose of the September 11 meeting, as noted above, was to obtain the employer's version of the charges made against him. In this connection I did question Mr. Gilbert extensively for the purpose of obtaining all the facts and to be certain that I fully understood his position with regard to all aspects of the case. It is true Mr. Caldwell did protest the questioning. I explained to Mr. Caldwell that I was only undertaking to ascertain the employer's point of view, and thereafter our conference concluded without further incident.

3. It is correct that I did advise Mr. Gilbert at the September 11 meeting that the investigation had disclosed violations other than those contained in the original charge, and that the charging party in all likelihood would file an amendment to its charges containing further allegations. I further sought information from Mr. Gilbert concerning his position with respect to these further violations. I emphatically and unequivocally deny making a statement at that time, or at any other time, that I would amend the charges "so that they would stick," or any similar statement.

4. During the course of the conference I did take notes in affidavit form seeking to set forth the facts as Mr. Gilbert related them. At the conclusion of the conference I showed the proposed statement to Mr. Gilbert and Mr. Caldwell, and asked Mr. Gilbert to read it over, make any corrections or changes which he deemed advisable and if he were willing, to sign the statement. Thereupon, Mr. Gilbert and Mr. Caldwell went into a separate room and conferred privately. Shortly thereafter, Mr. Gilbert advised me that he was not prepared to sign the statement until he had studied it further, and he requested that I let him have the handwritten statement. I advised him that I wished to keep it for my files, but that I would promptly have a copy typed and mail it to him for his approval and signature. This was done, and subsequently, on September 24, 1952, Mr. Gilbert returned his own affidavit to the regional office, outlining his own version of the allegations made in the charge. A comparison of the statement which I submitted, and the statement which he returned, indicates that no changes of a substantial nature were made.

The above statement, to the best of my ability, is a full and complete one concerning the incidents to which Mr. Gilbert testified. I recognize the inadequacy of fully meeting allegations, such as Mr. Gilbert has made, without a personal appearance before the committee. I wish to state to the committee that I am not only willing to appear before it, but would welcome the opportunity to present more fully my side of the story and to explain further to the committee what I regard as a distortion of the true facts by Mr. Gilbert.

Yours very truly,

ALBERT SCHNEIDER, *Field Examiner.*

SAN FRANCISCO, CALIF., May 11, 1953.

HON. JOHN O. GRAHAM,

*Chief Clerk, Committee on Education and Labor,
House of Representatives, Washington, D. C.*

SIR: My attention has been called to certain testimony given before the committee by Mr. Clifton Rooker, of Stanislaus Implement & Hardware Co., Ltd., in which Mr. Rooker testified concerning my participation in a proceeding, known as case No. 20-CA-583, before the National Labor Relations Board involving his company. I am a field examiner for the National Labor Relations Board attached to the twentieth region of the Board with headquarters in San Francisco. I was assigned to the case for the purpose of seeking to obtain compliance with the order issued by the Board in this case. Mr. Rooker's testimony appearing on pages 5610 and 5611 of the transcript does not present an accurate picture of my participation in this proceeding, and I wish to submit to the committee a statement setting forth the facts in this regard.

Mr. Rooker testified in substance that I submitted to him a statement showing the sum of \$1,783.13 as being due to Mr. Sims, the discriminatee; that I had included the sum of \$858.50 for expenses allegedly involving money spent looking for jobs; and that I had supplied him with a list of some 85 employers Mr. Sims

supposedly contacted in his search for a job. I wish to report that on February 4, 1953, I met with Mr. J. Hart Clinton, counsel for the California Association of Employers, and Mr. Winston Caldwell, of the California Association of Employers, to discuss the only remaining aspect of the employer's compliance with the Board's order—namely, the back pay due Mr. Sims. At that time, I had received data from Mr. Rooker setting forth the sums that Mr. Sims would have earned during the period of discrimination. I also had information from Mr. Sims concerning his interim earnings, together with a statement of his expenses. It had not been possible at that time to verify the accuracy of the data submitted by Mr. Sims, and in response to Mr. Caldwell's request for an approximation of the amount due, I presented him with a copy of my worksheet predicated upon the data above noted, adding that there would be some corrections which would indicate a figure of approximately \$1,300, the sum of back pay due. Mr. Caldwell noted the amounts and kept a copy of the worksheet which I submitted him.

I wish to state emphatically that neither at this nor at any other time did I present to Mr. Rooker or any of his representatives a statement that the liability of the employer was in the sum of \$1,783.13. As it is indicated above, they were only shown preliminary computations together with a statement that additional data already received would probably result in some downward adjustment, but that even then, the figure could not be construed as final.

At a later date I supplied Mr. Caldwell with a statement showing all of the interim employers for the period of discrimination, together with a copy of Sims' statement of expenses. Such data was submitted for the purpose of affording the employer opportunity to ascertain the accuracy of Sims' claimed earnings and expenses. At the time these figures were made, we were seeking but had not yet obtained data concerning Sims' earnings from the Social Security Administration. They subsequently have been obtained. Upon the basis of this verified data, I have submitted further computations to Mr. Caldwell indicating that the correct amount, according to my computations, is in the sum of \$1,261.91. The employer has in no way been precluded from questioning these figures, and, at the present time, a hearing is scheduled before a trial examiner for June 25, 1953, at which time the employer will be afforded every opportunity to present whatever evidence he has.

In my judgment, the above facts make it clear that Mr. Rooker's statement to the committee concerning my participation in the compliance aspects of this case are distorted. I have set forth the facts concerning my connection with this case to the best of my ability by means of this letter, although I realize that such a presentation is in no way as adequate as an appearance before the committee. I wish to state that I am not only willing, but would urge, that the committee afford me the opportunity to appear before it to explain fully my connection with the case about which Mr. Rooker testified, or to answer any other questions the committee might wish to address to me.

Very truly yours,

BRADFORD C. WELLS,
Field Examiner.

SAN FRANCISCO, CALIF., May 12, 1953.

Hon JOHN O. GRAHAM,
*Chief Clerk, Committee on Education and Labor,
House of Representatives, Washington, D. C.*

SIR: The testimony of Mr. Ross Thoresen, manager of the Industrial Relations Council of Utah, has been called to my attention. I am a field examiner with the National Labor Relations Board assigned to the San Francisco regional office, jurisdiction of which extends to the State of Utah. In his testimony, Mr. Thoresen on pages 5462 and 5463 mentions my name as the NLRB field examiner assigned to the investigation of a case in Utah known as Cache Valley Dairy Association, case No. 20-CA-674, and he refers to my interviewing certain witnesses and my failure to interview certain others.

I wish to call to the committee's attention the fact that I was not assigned to investigate that case nor did I participate in its investigation in any way prior to the issuance of the complaint, nor at the hearing which followed such complaint. Subsequently after the issuance of the Board's decision and order on March 4, 1953, I was assigned to the case for the purpose of affording the employer whatever assistance I could in effecting compliance of such decision and order. That is the only connection whatsoever which I had with the case.

Mr. Thoresen, therefore, has been inaccurate in his statement to the committee that I was the investigator, and I am submitting this so that the record may reflect the true facts.

Very truly yours,

BRADFORD C. WELLS, *Field Examiner.*

NATIONAL LABOR RELATIONS BOARD,
Washington D. C., May 14, 1953.

JOHN O. GRAHAM,
*Chief Clerk, Committee on Education and Labor,
House of Representatives, Washington, D. C.*

DEAR MR. GRAHAM: Attached is a letter addressed to our Chicago regional director, Ross M. Madden, from Miss Virginia McElroy, a field examiner in our Chicago office, submitted in response to the invitation of Chairman McConnell in his letter to me of April 30, 1953.

Miss McElroy had left on extended leave in Europe prior to Mr. Lawrence J. Reilly's testimony concerning her on April 23, 1953, and consequently I have been unable to pursue this matter further with her at this time. You will recall, however, from the statement of this case which I submitted to the committee, that very close questions of law were involved but that we filed a petition for an injunction under section 10 (1) of the Labor-Management Relations Act of 1947 on May 8, 1953; and a hearing has been scheduled by the court for May 18, 1953.

Very truly yours,*

GEORGE J. BOTT,
General Counsel.

PARK-HOTEL HAARLASS,
Heidelberg, May 7.

DEAR ROSS: Your memo of May 1 regarding the testimony of Mr. Reilly of the Reilly Cartage Co. reached me here today. Without benefit of file notes or memoranda to refresh my recollection of the facts of this case, I offer the following reply to the charges or statements made by Mr. Reilly on this matter.

On the day that this case was assigned to me for investigation I called Mr. Hoebreck by telephone and arranged for an appointment to interview his witnesses in connection with the allegations contained in this charge. On the agreed upon date I interviewed Mr. Reilly in the presence of Attorney Davis at the latter's office in Milwaukee. After obtaining all the facts which Mr. Reilly was able to place at my disposal I set out immediately to locate and question the various persons he had named as having witnessed the incidents of which he complained. I have slight recollection now of the testimony of these persons. However, I do recall that the supervisory employees of Reilly's customers, to whom I was referred, testified freely; and with one exception, all were witnesses friendly to Reilly's interests. The facts which they supplied failed to show action either by employees under their supervision or by union officials which could be regarded as violative of the act. As I proceeded further with the investigation, however, I encountered employee witnesses hostile to Reilly's interests who, in some instances, refused to give any testimony except at the express direction of their union officials. Those who talked at all denied knowledge of incidents related to the facts given by Reilly, but in each case they appeared to have knowledge that the union had filed unfair labor practice charges against Reilly; and they expressed resentment over the fact that the Board had not as yet taken action against Reilly on these matters.

In connection with the refusal of witnesses to testify, I called Roy Lane who confirmed the fact that instructions had been given to the members not to answer inquiries of board agents, except in the presence of the union's lawyer. During this conversation Lane denied that any of the union's members had been instructed to refuse to perform services on Reilly's trucks. Lane called attention to a provision in the union's contracts with Reilly's customers wherein it was agreed that employees would not be required to perform services on the property of any contractor who was a party to a labor dispute with the union. The wording of this provision I don't recall now, but a copy of this contract is in the file. Lane then pointed out, in connection with his denial, that in

any event it was unnecessary for him or any other union official to instruct the members concerning Reilly because they were all aware of Reilly's hostility to the union, and that individual members were particularly indignant over the fact that his trucks crossed their picket lines during the citywide trucking strike.

Following the conversation with Lane I revisited the office of Attorney Davis and related the above to him. Reilly was not present. Davis appeared to agree with my conclusion that Lane's explanation was reasonable (1) in view of Reilly's known hostility to the union, and (2) the fact that these 3 or 4 annoying incidents had occurred in connection with only a few of the motor carriers who had union contracts, and who were doing business with Reilly. However, it was the theory of Attorney Davis that since the evidence showed clearly that there had been discussions at union meetings concerning the status of the dispute between Reilly and the union, that such evidence alone supported a conclusion of violation of the act. On this point I disagreed with Davis. During the discussion which followed, Davis said that while Reilly had not as yet suffered any financial loss as a result of these incidents, the implications were that he would eventually if such actions were permitted to continue. I replied that while I could personally sympathize with his problem, I could not foresee the possibility of a legal remedy so long as the union confined its activities to those which were permissible under the law. At the conclusion of our discussion I remarked to Attorney Davis that disagreeable as it might be to his client, perhaps he would be better off to sacrifice his principles rather than run the risk of losing his business. Davis agreed that this might be the practical solution, but that other methods would be tried first. I left Davis with the understanding that my report would be submitted through the usual channels, and that he would thereafter receive advice from the Director as to what disposition would be made of the charge. Davis thanked me for discussing this with him before making my report, and I left his office.

Reilly was not present during any part of this discussion, and the only way he could have learned of my off-the-record remarks to Davis was from Davis himself.

Respectfully submitted.

VIRGINIA M. McELROY,
Field Examiner.

Chairman McCONNELL. Now, in order to set up the arrangements here, Mr. Metcalf has spoken to me, and my understanding was that we would start off today with the prior statement or question you wished to bring up right now.

Mr. METCALF. I have it in the record at the beginning of the hearing this afternoon.

Chairman McCONNELL. Fine. We are all straightened out there, and that will be followed by the statement of Mr. Herzog, and then we start on the general discussions we had today. I think that is understood by everybody. At the conclusion we also have the statement which Mr. Ringer has put in, and Mr. Bott's full statement goes in right from the beginning as you gave it; you read it from the beginning.

I think we understand everything, and we are nearing the end of this monumental piece of work for the committee that we have been on since February 10.

(COMMITTEE NOTE.—In accordance with the above remarks of Chairman McConnell, the information referred to has been made a part of the printed record.)

Mr. KERSTEN. Mr. Chairman.

Chairman McCONNELL. Yes, Mr. Kersten.

Mr. KERSTEN. I spoke to the chairman privately about a request on behalf of one of the prior witnesses, Mr. James Carey, to file a statement in reply to a statement that was made by Mr. Boulware. I understand the feeling of the chairman about any back-and-forth situations, but in the event, apart from that question, could the record

remain open for such a statement, provided the thing you mentioned is overcome?

Chairman McCONNELL. The objection that I had raised to it was that it sets a precedent which we would probably have to follow in many other cases. There would be no terminal.

Mr. KERSTEN. Apart from that question, of the unending feature of it, is the record open, as I understand it, until May 15? The reason I am stating this is Mr. Carey called me and asked me.

Chairman McCONNELL. Yes; but the record will not be open for continuation of the airing of an argument, you might say, between the General Electric Co. and Mr. Carey, because then we would have to open it up to a lot of other cases. The statements that we will receive are statements of people who wish to testify and did not have the time to get their statements ready between now and May 15.

Mr. KERSTEN. I say, apart from the question of having repeated unending back-and-forth statements, apart from that question, could the record remain open for further statements?

Chairman McCONNELL. The record is open until May 15, but I think that the committee should recognize this situation and be ready to object, if necessary, if it involves a continuation of this argument.

Mr. KERSTEN. I do not want to press that point at this time.

Mr. BOTT. I want to thank you, Mr. Chairman, for the opportunity. It was a pleasure to be here. I really mean it, and I was glad of the chance to tell you some of the things that bothered us. I know you have plenty to study in the record.

Chairman McCONNELL. Thank you, Mr. Bott.

Mr. STYLES. I would like to say, too, on behalf of the Board, that we appreciate the opportunity not only of being here but of being of any further service to the committee that we might be able to be. If there is anything we can give you that is in our power we will be glad to make it available to you.

Mr. RINGER. On behalf of the trial examiners, I feel the same way.

Chairman McCONNELL. Thank you. On behalf of the committee, Mr. Bott, Mr. Ringer and members of the National Labor Relations Board—I think you lawyers say “et al.”—I want to express my appreciation for your appearance here today. It has been a long session. We have been desirous of finding out certain facts, and also of being fair to all sides in this question of the probing of the answers to some of the matters involved in our hearing during the time that we have been sitting.

We will now recognize our chief clerk, Mr. Graham, who will submit for the record, if there are no objections, a number of statements and letters the committee has received.

Mr. GRAHAM. Mr. Chairman, the first statement is from the Honorable John Lesinski.

(The statement referred to follows:)

STATEMENT OF HON. JOHN LESINSKI, JR., A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF MICHIGAN

Mr. Chairman and members of the committee, there are many features of the Taft-Hartley Act which should be amended to conform with the needs of both labor and industry for proper and harmonious relationship between labor and management. The law discriminates against both, and especially against labor.

For centuries there have been organizations to protect individual rights. I see no reason why this should not be true today. At this time I am only going to take up one section of the law.

H. R. 4645, which I introduced, would only clarify the law as to who could, from the ranks of foremen throughout the industry, join a union of his own choice. I do not see any reason why these employees of a firm who do not directly fire or hire, should not have the right to organize. It seems that they were excluded so that it would be impossible for them to acquire the status they are entitled to in connection with their work.

Opposition to the amendment I proposed seems unwarranted, especially when the foremen want to establish an independent union which would be strictly within their own jurisdiction.

Mr. Chairman and members of the committee, it would seem in view of the testimony on this part of the law, which has been so thoroughly covered and the need substantiated, that the adoption of H. R. 4645 would be in order. It still allows management to have control over all employees and also takes away the stigma of discrimination.

Mr. GRAHAM. A letter and memorandum from the National Society of Professional Engineers, Washington, D. C., addressed to the Honorable Carroll D. Kearns.

Chairman McCONNELL. Without objection, the information will be made a part of the record.

(The letter and memorandum referred to is as follows.)

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS,
Washington, D. C., May 7, 1953.

HON. CARROLL D. KEARNS,
House of Representatives,
House Office Building, Washington, D. C.

DEAR REPRESENTATIVE KEARNS: In line with your suggestion, we have drafted a memorandum outlining the problem faced by the engineering profession because of the application of several sections of the present law. It would be of considerable help to us if you could find time in your busy schedule to review this draft and give us the benefit of your further comments. We shall be glad to meet with you at your convenience to receive such comments if you will have your secretary notify us of the time and place.

Following further revision of the memorandum based on your comments, we would propose to send a copy to Chairman McConnell together with a covering letter explaining the evident confusion of the position of the various engineering groups which appeared before the committee on March 27, 1953. In the covering letter, we will endeavor to make it quite clear that the National Society of Professional Engineers does not support the union point of view and, in fact, takes the position that professional engineers should not be forced into a union situation, as presented in testimony by the Engineers and Scientists of America, a union group holding views quite contrary to those of this organization.

Thank you again for your courtesy and consideration, and we look forward to hearing from you at your earliest convenience.

Very truly yours,

PAUL H. ROBBINS, P. E.,
Executive Director.

MEMORANDUM BY NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS RE AN AMENDMENT TO THE LABOR-MANAGEMENT RELATIONS ACT, 1947, TO FACILITATE FREEDOM OF ASSOCIATION FOR PROFESSIONAL PERSONNEL

With the passage of the Wagner Act in 1935 it became the policy of the United States Government to foster and promote the concept of collective bargaining as the most satisfactory method of resolving differences and disputes between labor and management. This fundamental concept was followed in the Labor-Management Relations Act, 1947.

Under this concept the employed working force of the Nation is divided into two major categories—employees and management representatives. There is a sharp line drawn between the two groups and under the terms of the law "management" is forbidden to interfere with, restrain, coerce, or dominate the

employee segment in the exercise of their rights as established in section 7 of the act. That these policies are sound and should be continued in any revision of the labor law is not challenged. But it should be noted that in the framing of the Wagner Act and the successor Taft-Hartley Act the legislators, in drawing the line of demarcation, were thinking of the rank-and-file production, clerical, and maintenance workers and others in similar classifications, who it was felt were in need of protection from any activities of management which might interfere with their collective-bargaining rights. Whether this degree of protection was necessary for professional employees was evidently not considered in the light of their different backgrounds. Those who are within the professional category generally have the advantage of collegiate training, intellectual study, and the responsibility for the application of discretion and judgment in their daily jobs. We think it self-evident that such a group does not need such protection against employer interference or domination.

The "across the board" division between "employees" and "management" works to the serious detriment of professional personnel because of the application of several provisions of the law, which, when construed together, amount to a congressional declaration that the professional personnel employed in industry have only one of two choices in matters affecting their professional development and economic interest: (1) Organize as a union and bargain collectively with management, or, (2) avoid unionization by exercising that option under the provisions of section 9 (b) (1) and have no joint communication with management on problems of importance and mutual interest. Neither of these choices is satisfactory to the majority of the professional personnel of the Nation, particularly professional engineers who, more than other professionals, are employed by industry in large numbers, because all segments of the group must work as a single unified "team" to achieve the utmost in professional and technical progress.

In some instances professional engineers have formed local associations which are not, and are not intended to be, collective-bargaining agencies, but rather are designed to provide a vehicle whereby the professional engineer members may consider their mutual problems together. Their activity is almost exclusively in the realm of professional development, professional recognition, analysis of industry systems, and operations as related to professional engineers and similar considerations. The consideration of such problems, in their broad scope may, however, lead to collateral considerations which involve "working conditions," or even the question of wages and hours; all of which are the subjects which section 2 (5) of the act mentions as being the subjects which are the business of labor organizations.

These local associations or groups include within their membership both "employee" professional engineers and "management" professional engineers, the philosophy being that all such personnel are members of the same profession and consequently all of them have mutual professional interests. The problem exists because the "management" professional engineers are included in membership in the local associations or groups. This is desirable because without such integration of all levels of professional thinking, the profession loses its cohesive nature and open interchange of ideas, opinions, and comments. This full and free exchange between all members of the profession has been a vital factor in the industrial development of the Nation and has been, in fact, the way in which the profession has progressed in its technical advancement for more than 100 years. The technical organizations of the profession make no artificial distinctions in meetings and publications as between those who are "employees" and those who are "management." It is submitted that reason and continued industrial progress demand the same rule in matters of professional development and activity.

Because of the integrated nature of the local associations and because in their operations they may touch upon "working conditions" they are under a constant cloud of being attacked as "company dominated" labor organizations in view of the broad definition of the term, "labor organization" under section 2 (5). The alleged company domination is considered possible because the "management" professional engineers in the group may be construed as using their influence and membership participation to sway the general membership away from collective bargaining. It is our view that professional personnel are intelligent enough to elect between collective bargaining and any other channel of communication with management and are not likely to be dominated in that choice. Nor do we feel that the public interest is served by a state of the law which tends to encourage one choice while placing limitations upon the other.

Those "professional employees" who desire to be represented through a union and collective-bargaining procedure should be permitted to do so; but those who do not desire to engage in collective bargaining should likewise be protected in their rights. Such a result may be achieved by the simple step of having the law reflect the fact that members of a profession (including both employee and management personnel) may be permitted to form and participate in organizations to consider mutual professional problems if those persons have not affiliated with or are not represented by a union. It is suggested that by removing such organizations from the broad definition of "labor organization" they and the Nation will best be served. The following amendment to section 2 (5) of the present law is offered to execute this purpose:

"Sec 2. (5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plant, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work: *Provided, That the term 'labor organization' shall not include organizations of professional personnel as defined in section 2 (12) of this Act if the Board has not certified or the employer has not recognized a representative as their representative under section 9.*"¹

Mr. GRAHAM. A supplemental statement from the National Association of Manufacturers.

Chairman McCONNELL. Without objection, the statement will be made a part of the record.

(The statement referred to is as follows:)

SUPPLEMENTAL STATEMENT OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

The hearings on proposed amendments to the Labor-Management Relations Act of 1947, now drawing to a close, have occupied the time of this committee for some 13 weeks. Despite the fact that only a small proportion of those applying for time to testify have been heard, a broad cross section of opinion has been presented for the consideration of your committee.

It is the purpose of this statement briefly to review and evaluate the record to date in light of the original intent of the Taft-Hartley Act, its operation over the past 6 years, and the principal changes now proposed to be made in the act. Before taking these matters up in more detail, a few general observations seem warranted in an effort to establish a perspective which will assist in appraising this very important matter.

Of a relatively recent date, union leaders have made much of their willingness now to accept amendments to the Taft-Hartley Act as opposed to outright repeal so stridently demanded for the past 6 years. On analysis, however, the amendments now demanded amount to repeal in practical effect. This should not be construed as a deliberate misrepresentation or a shameless effort to deceive the Congress and the American people for, in most instances, the design of this attack has been forthrightly admitted.

Thus, insofar as receiving any help or constructive suggestions from labor leaders is concerned, the Congress is in exactly the same position it has been in ever since 1947. That is to say, no compromise is possible and nothing short of a return to the discredited Wagner Act would come anywhere near appeasing the demands of the leaders of organized labor.

Notwithstanding the fact that the act has now been in operation for almost 6 years, the case sought to be made against it by the spokesmen for organized labor is based entirely upon an alleged threatened damage, as opposed to an actual injury to the legitimate objectives of trade unionism. No cases are cited, no figures are shown, and no individual employees have testified to demonstrate how the Taft-Hartley Act has served to enslave labor. On the contrary, the cases, the figures, and the testimony of individual employees² demonstrate exactly the opposite—a far different condition from that which existed in 1947 when the Wagner Act was amended on the basis of a completely documented record of abuses extending over a period of 12 years.

For example, one of the important purposes of Congress in enacting the LMRA was to protect employees, employers, and the public against such unjustifiable

¹ New material in *italics*.

² See appendix A to testimony of George W. Armstrong, Jr., before Senate Committee on Labor and Public Welfare, March 26, 1953.

practices as the use of threats, force, and violence to compel employees to join unions, secondary boycotts which drive employers out of business and throw their employees out of work merely because they do business with someone with whom a union has a dispute, and jurisdictional strikes which stop production while unions argue about which one's members are entitled to do certain work. The act sought to eliminate these and similar practices by declaring them unfair labor practices when engaged in by labor organizations or their agents.

That these provisions have served their intended purpose of protecting employees against union coercion and have not, as charged by some, been used by employers to harass labor organizations, is amply demonstrated by an analysis made by NLRB of all unfair labor practice charges filed against unions during the first 4 years under the amended act.

The Board's analysis, published as table 1A in the appendix to its annual reports for the fiscal years 1948 through 1951, shows that the great majority of charges against unions have been filed, not by employers, but by individual employees and by other unions seeking the protection of the act. Thus, during the period for which full statistics are available, from August 22, 1947, to June 30, 1951, over 70 percent of all charges against unions under sections 8 (b) (1), (2), (3), (5), and (6) were filed by individual employees and by other unions, and less than 30 percent by employers. Charges under section (8) (b) (4), involving secondary boycotts, jurisdictional strikes, and unlawful recognition strikes, by their very nature must be filed by employers in most cases. But even when these are included, more than 55 percent of all charges against unions have been filed by employees and unions, and less than 45 percent by employers. Furthermore, the Board's preliminary figures for the fiscal year 1952 show an even higher percentage—60 percent—filed by employees and unions, indicating a further trend in that direction as employees become more familiar with the act and the protection it affords them.

Prior to and ever since the effective date of enactment of the LMRA, August 22, 1947, this act has been the subject of intense political controversy. Despite extravagant claims from some quarters to the contrary, however, the act in operation cannot be said to have functioned as an "antilabor" statute. Since 1947, union membership has increased from a claimed 14 million to something over 16 million, and union treasuries have also shown corresponding increases in revenues during the 6 years that the Taft-Hartley Act has been on the statute books.

The number and scope of strikes during this period of time afford convincing evidence that the act has not foreclosed the "right to strike" as sometimes claimed by union spokesmen. Neither does the record indicate that courts have been unduly burdened with litigation as a result of this legislation, nor does the caseload of the National Labor Relations Board show any marked increase when considered in the light of continued union organizing activities and increased union membership.

The National Labor Relations Board statistics clearly demonstrate that individual employees have utilized the act to a far greater degree than is generally realized and from this standpoint there can be no question but that the congressional intent of protecting the rights of individual employees has been realized to a large extent. The Board has been a jealous guardian of these rights, at least in protecting employees against unfair employer practices. It has been less zealous in protecting these rights against unfair union practices.

The act is not complete or entirely effective in several important areas. It has shortcomings which may ultimately have to be corrected by amendments. For example, the act does nothing to curb or regulate in anywise the growing practice of industrywide bargaining.⁸ This practice in and of itself has led to an unwarranted growth in power of international unions and in a major degree to a breakdown of genuine good faith collective bargaining between employers and representatives of their employees. In such instances bargaining is still conducted as a political maneuver with unions directing their entire strategy toward bringing about governmental intervention on their behalf. Once this is accomplished, bargaining at the local or plant level is a practical impossibility and employers, as well as local union leaders, must await the pleasure of international union officials before they even know what the demands will be.

The injunctive remedy is available only through a governmental agency (either the NLRB or the Department of Justice) and then only in national emergency

⁸For further discussion of industrywide bargaining, see testimony of George W. Armstrong, Jr., before House Committee on Education and Labor, March 4, 1953.

situations or in connection with clearly outlawed practices such as secondary boycotts, jurisdictional strikes, etc. The act permits no employer or other private individual to obtain an injunction against unlawful acts or practices by labor unions or their agents. Corrective action through such governmental processes often is too long delayed to be effective.

The use of the national emergency provisions is a discretionary matter at present and for the past number of years there has been a great reluctance on the part of the administration to utilize these remedies. This has resulted in circumventing and evading the lawful procedures established in the EMRA and resort to "extra-legal" procedures—even to the extent of resorting to unconstitutional seizure of private property—designed to place the weight and authority of the Federal Government on the side of labor unions in their efforts to achieve demands which they could not gain through genuine collective bargaining.

The amendments of the Wagner Act, embodied in the 1947 statute, had as their purpose achievement of three basic objectives:

First, based upon an extensive record of demonstrated abuses of power, one purpose expressed in the policy declaration of the LMRA was "to protect the rights of individual employees in their relations with labor organizations."

Second, by making both employers and labor organizations equal before the law, Congress sought to encourage genuine collective bargaining as a means of minimizing the impact of industrial disputes upon the public. This objective is also made clear in the Senate committee report which states:

"The committee bill is predicated upon our belief that a fair and equitable labor policy can best be achieved by equalizing existing laws in a manner which will encourage free collective bargaining. Government decisions should not be substituted for free agreement but both sides—management and organized labor—must recognize that the rights of the public are paramount."

At the same time, as further stated in the committee report, Congress did not "believe that social gains which industrial employees have received by reason of these statutes should be impaired in any degree." Legislation was urgent, however, the committee found, because court interpretations had "placed union activities, no matter how destructive to the rights of the individual workers and employers who are conforming to the National Labor Relations Act, beyond the pale of Federal law."

To bring about equality of positions under the Federal labor law, Congress also deemed it necessary to impose certain procedural reforms upon the National Labor Relations Board, which was continued as the agency to administer the amendments made to the Wagner Act. The necessity for such reforms was recognized by the Senate committee, which said:

"Moreover, the administration of the National Labor Relations Act itself has tended to destroy the equality of bargaining power necessary to maintain industrial peace. This is due in part to the one-sided character of the act itself, which, while affording relief to employees and labor organizations for certain undesirable practices on the part of management, denies to management any redress for equally undesirable actions on the part of labor organizations."

Consequently, in the Taft-Hartley Act, the Congress enacted procedural provisions designed to require NLRB orders to be based upon evidence rather than inference, prejudice, or "expertness." (See conference report, pp. 53, 54, 55.) Thus, it is expressly provided that NLRB hearings be conducted "in accordance with the rules of evidence applicable in the district courts of the United States" (sec. 10 (b)), and that its orders be supported by the "preponderance of the testimony taken" (sec. 10 (c)). In addition, Taft-Hartley amendments made clear that NLRB findings of fact were to be accepted by reviewing courts only "if supported by substantial evidence on the record considered as a whole" (sec. 10 (e)). Because of the demonstrated need, these procedural safeguards were included in the Taft-Hartley amendments to buttress the command of the Administrative Procedure Act of 1946 that "the proponent of a rule or order shall have the burden of proof" (sec. 7 (c)). Notwithstanding these clear expressions of congressional purpose, the National Labor Relations Board has followed its Wagner Act concepts of *per se* illegality and holds that proof of one fact alone is sufficient to warrant an inference of unfair labor practice and thus the issuance of a cease-and-desist order. The result has been that employers, because of this prosecutor's device, have been compelled to seek relief in the courts from unsupported NLRB orders. (See, e. g., *NLRB v. American National Insurance Co.* (343 U. S. 395); *NLRB v. Bradley Washfountain Co.* (192 F. 2d 144); *NLRB v. Landis Tool Co.* (193 F. 2d 279); *Rubin Brothers Footwear, Inc. v. NLRB* (CA-5, 31 L. R. R. M. 2614).)

Third, as stated in the law's declaration of policy, Congress sought "to protect the rights of the public in connection with labor disputes affecting commerce."

Again it must be emphasized that union leaders' demands for amendment of the Taft-Hartley Act are based almost entirely on the grounds of alleged threatened damage to the cause of their union organizations. The record is devoid of any actual cases wherein it can be shown that the awful things they speak of have, in fact, taken place.

This committee will recall that it enacted the Labor-Management Relations Act in 1947 only after 12 years of experience under the Wagner Act and on the basis of a record so completely documented with actual existing abuses that the public interest demanded corrective action on the part of Congress. Surely the Congress will not now feel compelled to weaken the moderate corrective measures enacted in 1947 on the basis of extravagant statements by union leaders, disgruntled over the fact that their hitherto uncurbed powers have been regulated in the modest way they are in the Labor-Management Relations Act until such time as real injury to the legitimate objectives of trade unionism can be shown, or constructive suggestions for improvement in the operation of the law can be provided, it seems unthinkable that weakening amendments to this statute might be adopted by the Congress.

The following discussion of some of the more controversial subjects in the Labor-Management Relations Act presents a brief background of the reasons why various sections were initially enacted, how they have functioned in operation for the past 6 years, and current proposals to amend these various provisions. This statement is submitted in an effort to be helpful to your committee and place in proper perspective the whole matter of amendments to the Labor-Management Relations Act of 1947.

1. REPLACED STRIKERS AS VOTERS

The Supreme Court held as early as 1938 under the Wagner Act that an employer has "the right to protect and continue his business by supplying places left vacant by strikers. And he is not bound to discharge those hired to fill the places of strikers, upon the election of the latter to resume their employment. The assurance by (the employer) to those who accepted employment during the strike that if they so desired their places might be permanent was not an unfair labor practice nor was it such to reinstate only so many of the strikers as there were vacant places to be filled" (*NLRB v. Mackay Radio & Telegraph Co.* (304 U. S. 333, 345)).

The Board, however, consistently held under the same act that permanently replaced economic strikers who had no right of reinstatement under the Supreme Court's ruling could nevertheless, if the strike was still "current," vote in NLRB representation elections and have their votes counted in determining the result. (See *Columbia Pictures Corp.* (64 N. L. R. B. 490, 519-522 and cases cited therein).)

In its study of the operation of the Wagner Act, Congress could see no justification for the Board's rule. As stated in the Senate committee report on the bill subsequently enacted as the Taft-Hartley Act, "it appears clear that a striker having no right of replacement should not have a vote in the selection of a bargaining representative." Accordingly, section 9 (c) (3) was amended to provide that "employees on strike who are not entitled to reinstatement shall not be eligible to vote."

There have been proposals to delete the quoted provision and thereby restore the rule established by the Board under the Wagner Act. Analysis of that rule and of the reasons stated by the Board for its adoption furnish perhaps the best means of evaluating these proposals. The Board's reasons are stated at some length in the *Columbia Pictures* case cited above, where the Board ruled on challenge filed by the company to the ballots of 51 striking set decorators and challenges filed by the union to the ballots of the 51 replacement decorators, in an election held 10 weeks after the strike was called. The Board found that the replacements were hired permanently and lawfully under the Mackay doctrine and were entitled to vote, and it ordered their ballots counted. At the same time it held that the 51 strikers, although permanently and lawfully replaced under the Mackay doctrine, were also entitled to vote and it ordered their ballots likewise counted.

As one of its two reasons for permitting the replacer strikers to vote, the Board stated that in the natural course of events there will be some vacancies resulting from turnover in the bargaining unit and when such vacancies occur the employer

may wish to hire back some of the replaced strikers because of their skill. By this reasoning, NLRB elections might just as well be opened up to the general public, or at least to all members of the public who are skilled in the work performed in the bargaining unit, because the employer may wish to hire them at some time when vacancies occur.

As its second and perhaps major reason, the Board said that strikers, even though permanently replaced, "shall be permitted, while the strike is still current, to select representatives to bargain with the employer on the question of their possible reinstatement." Analysis of this reason reveals two inherent weaknesses which are contrary to the purposes of the act. For one thing, even the Board as then constituted would permit replaced strikers to vote only "while the strike is still current." The Board's decisions held that strikes were "still current" as long as any indicia of a dispute existed, i. e., picketing, negotiations, or other activity which commonly accompanies a dispute. Under this broad doctrine the Board found disputes still current long after all strikers had been replaced and full operations had been resumed, provided the union continued picketing, even with a single picket, or other activity. Thus, in this situation, a union had every reason to prolong a dispute in order to preserve the so-called rights of strikers who had long since been replaced. It is submitted that such incentives to perpetuate disputes have no place in an act intended to minimize interference with commerce through labor disputes and to promote industrial peace.

Furthermore, the Board's reason contains another inherent and fatal weakness. Persons with no right of reinstatement can have no interest in bargaining on wages, hours, or working conditions unless they can first obtain reinstatement. Thus the so-called right of replaced strikers to vote for a bargaining representative can have no value to them except on the theory that it may enable them to select a representative which will favor them over the replacement employees, by insisting on reinstatement of the strikers and discharge of their replacements. The act contemplates, however, that a majority representative shall impartially represent the interests of employees in the unit, and the Supreme Court has so held. Thus the Board's rule under the Wagner Act gave replaced strikers a right which was totally inconsistent with the act's basic principle of exclusive and impartial representation.

The only charge made against the Taft-Hartley provision is a general one of union busting, unsupported by cases or examples. The total absence of any proof to support this charge after nearly 6 years of operation of the act shows that the charge is without foundation. It appears beyond question that the Congress was right in adopting the present provision and that, far from being deleted, it should be retained and strengthened so as to include all permanently replaced strikers rather than merely economic strikers. As stated in the conference report on the Taft-Hartley bill, at page 32, "Board practice has had the effect of treating more favorably employees striking to remedy practices for which the National Labor Relations Act itself provides a peaceful administrative remedy, than employees who are striking merely to better their terms of employment." The report added, at page 33, "since the different treatment of unfair labor practice strikers and economic strikers is simply a practice of the Board which the Board can change within the framework of the existing law, it was thought by the House managers that the Board should be given an opportunity to change this practice itself rather than needlessly complicating the definition of the term 'employee'."

Inasmuch as the Board has failed for nearly 6 years to effectuate the congressional intent thus clearly expressed, there is no reason to believe it will change of its own accord in the future. Thus an express mandate would seem appropriate to require the Board to abandon its policy which encourages unions to bypass the peaceful remedies of the act and substitute strike action therefor.

2. STRIKES DURING THE 60-DAY COOLING-OFF PERIOD

To promote collective bargaining as a means of reaching agreement and settling disputes, Congress provided in section 8 (d) of the act that the duty to bargain requires a party desiring termination or modification of an existing contract to give 60 days written notice to the other party, to offer to negotiate during that period, to notify Federal and State mediation services within 30 days, and to continue the existing contract in force without strike or lockout for 60 days after notice or until its expiration date, whichever is later.

These provisions were intended to deal with "quickie" and "wildcat" strikes and other disturbances, impulsive or deliberate, which frequently occur in the

heat of that final period when contracts are being revised or terminated. Failure of employer or union to meet these requirements constitutes refusal to bargain, an unfair labor practice.

Unions, however, may disclaim responsibility for real or simulated quickie or wildcat strikes. To close this loophole and give full effect to the 60-day cooling-off period, therefore, the Congress provided that any employee who engages in a strike during that period "shall lose his status as an employee of the employer" for the purposes of sections 8, 9, and 10 of the act. Thus, employees who strike in violation of this provision lose all protection under the act and have no statutory right to reinstatement or to participate in representation elections or proceedings.

Here, again, there has been no case of hardship or oppression cited to justify any change in the present section. Nor has any evidence been submitted in support of the proposal of S. 655, introduced by Mr. Taft, to eliminate the provision that any employee who strikes during the 60-day period shall "lose his status as an employee." Again Congress is being asked to act on the basis of mere speculation that the law might, under some future circumstances, constitute a potential threat to rights of employees.

With collective-bargaining contracts being written for longer and longer terms, it is little enough to require of employers, unions, and employees alike that they refrain from strikes and lockouts during a 60-day period when negotiations are in progress, in order to give collective bargaining a fair chance. In fact, this section, like section 9 (c) (3) discussed above, apparently needs strengthening rather than weakening if it is to accomplish its purpose, in view of a recent decision of the Board in *Mastro Plastics Corporation* (103 N. L. R. B. No. 51, released Mar. 19, 1953).

The Board held by a 3 to 2 majority that this section does not apply to strikes during the 60-day period in protest against unfair practices of an employer and it ordered the employer to reinstate 76 strikers with 2 years back pay. Thus the Board extended its policy of according more favorable treatment to unfair practice strikers than to economic strikers—the same policy which Congress so severely criticized in its 1947 committee reports as discussed under the preceding heading. Under the Board's ruling, unions and employees can defeat the entire purpose of this provision by finding, provoking, or even creating, some minor unfair practice on which to hang a strike. The Board might well apply the same rule if employees strike against an unfair practice of their union, thus providing an easy means of evading this section.

As the dissenting members of the Board pointed out, any strike or lockout for any reason whatever during the critical period of negotiations impedes or disrupts the very collective bargaining which the statute seeks to encourage as a peaceful means of settlement of disputes. During this period particularly there should be no distinction between strikes for different causes, real or alleged.

6. FREE SPEECH

Because our traditions of free speech were being violated by the rules applied against employers under the Wagner Act, Congress added the present free-speech provision in section 8 (c) of the LMRA. It is difficult to understand how this provision could be objectionable to anyone. It protects expression of views, argument or opinion, but only if such expression contains no threat of reprisal or force or promise of benefit. It would seem beyond argument that everyone is entitled to this freedom.

As interpreted by the NLRB, however, this provision has a serious shortcoming in that it does not apply in representation matters before the Board. Thus even where an employer's statements contain no threat or promise and therefore cannot be held to "interfere" with employees' rights in violation of section 8 (a) (1), the Board nevertheless holds that the statements may "interfere" with employees' freedom to choose a representative and therefore justify the Board in setting aside an election lost by a union (*General Shoe Corp.*, 77 N. L. R. B. 124; see also 16th Annual Report, N. L. R. B., p. 133).

This rule appears to be applied against employers much more strictly than against unions. Two cases with somewhat similar facts will serve to illustrate the point. In *Kearney & Trecker Corporation* (96 N. L. R. B. 1214), just prior to a Board election a union distributed misleading excerpts most favorable to it from the Board's decision and direction of election, representing that such excerpts constituted the full text. Despite this false, misleading, and unscrupulous use of the Board's decision in such manner as to indicate to em-

ployees that the Board recommended that they vote for the union, the Board denied the employer's motion to set aside the election. It stated that it did not "believe that the statements of local 1083 with respect to the Board's findings, regardless of their truth or falsity, go beyond the bounds of legitimate union campaigning."

The other side of the picture appears in *Metropolitan Life Insurance Co.* (90 N. L. R. B. 935). There a CIO affiliate appeared on the ballot in an NLRB election, over the employer's objection that the CIO had not complied with the non-Communist affidavit requirements of the act (a ground subsequently upheld by the Supreme Court in the Highland Park case). A week before the election, the employer told its employees that it considered the Board's ruling wrong and that if the union should win "it is our intention to contest through the courts the issue of its failure to comply with the law." The union lost, but the Board set the election aside on the ground that the employer's statement of its intention to pursue its legal rights "tended to deter" the employees "from exercising a free choice in the selection of a bargaining representative."

The Metropolitan doctrine was extended even further in the recent case of *Scavullo et al., doing business as Legion Utensils Company* (103 N. L. R. B. 39), released March 25, 1953. In this case the UE and IUE were opponents in a Board election. The employer told his employees that UE was known to be Communist dominated and that if it should win he "would use all legal means that he could" to avoid bargaining with it. The employees rejected both unions. UE did not contest the result, but IUE moved to have the election set aside because of the employer's remarks about its rival, UE. Concerning these remarks, the Board said there is "no 'legal' means" to avoid bargaining, therefore the employer meant he would use illegal means, and therefore his statement constituted an "anticipatory refusal to bargain." On this reasoning it granted IUE's motion and ordered a new election.

We submit that when an employer cannot even state that he intends to pursue his rights under the Constitution and laws of the United States, freedom of speech needs more protection. It should be extended to NLRB representation cases as proposed in S. 655. Such amendment would, of course, apply to labor organizations and employers alike and give them equal protection. Neither is entitled to more and neither should have less.

Freedom of speech is too important for us to ignore another doctrine more recently developed by the Board, even though it might ultimately be changed by the courts. We refer to the doctrine announced in *Bonwit Teller, Inc.* (96 N. L. R. B. 608), which imposes a condition on an employer's exercise of his right of free speech in both representation and unfair labor practice cases. Under that doctrine he may address his employees on company time and premises in an NLRB election campaign only on condition that he permits the union to do likewise at his expense. The effect of this condition, succinctly stated in the dissenting opinion in that case, "is to require him to subsidize a campaign for the election of a union to which he may be opposed." And this under the same act which forbids him in section 8 (a) (2) to give "financial or other support" to any labor organization.

The Bonwit Teller doctrine, announced in a case where the employer operated a department store and had in effect the strict no-solicitation rule which the Board permits in such establishments, has been extended to all other employers. *Massachusetts Motor Car Company* (102 N. L. R. B. 171), released March 1, 1953. In its present form it is essentially a reincarnation of the old "captive audience" rule which was thoroughly discredited and thought effectively repealed in 1947.

Since the Board regards its doctrine as outside the scope of free speech, a clear and explicit mandate from Congress will apparently be necessary to abrogate the rule and prevent its further revival.

4. SUPERVISORS

One of the serious problems under the Wagner Act arose from the Board's policy of permitting unionization of foremen and other managerial employees, who were thereby placed in a position of divided loyalty between employer and union.

The Board itself, from the very beginning, was divided over this question. It first thought, with one member dissenting, that the statutory definition, by expressly excluding agricultural and domestic employees but not supervisors, so clearly required their inclusion that discussion would be a "barren academic exercise," and accordingly it held that supervisors could join any labor organiza-

tion, including a rank-and-file union, and have protected status under the act. *Union Collieries* (44 N. L. R. B. 165); also *Godchaun Sugars* (44 N. L. R. B. 874). Disturbed by the consequences of that holding, a divided Board reversed itself the following year in *Maryland Drydock* (49 N. L. R. B. 733), and held that supervisors were not protected in joining any union because "we are now persuaded that the benefits which supervisory employees might achieve through being certified as collective-bargaining units would be outweighed not only by the dangers inherent in the commingling of management and employee functions, but also in its possible restrictive effect upon the organization freedom of rank-and-file employees. It is not necessary to elaborate at length on either of these points."

Still divided, the Board, in *Packard Motor* (61 N. L. R. B. 4), returned part way to its original position and held that supervisors may organize under the protection of the act provided they join only independent unions having no affiliation with rank-and-file organizations.

Remaining divided to the end, the Board, in *Jones & Laughlin Steel* (66 N. L. R. B. 386), returned to its starting point that the statutory definition precluded it from treating supervisors differently from other employees, and that they could join any union and have protected status under the act. In so holding, however, it recognized three serious problems; (1) "the effect of the unionization of foremen upon the bargaining relations between management and the union which represents the rank and file; (2) the impact of the self-organization of foremen upon their relations with the men they supervise; and (3) the effect of this decision upon the relations of management with its foremen and the effect of the unionization of the latter upon their loyalty to the employer's interests." Nevertheless, it concluded that it had no authority under the statute to exclude supervisors, regardless of its "concern as to what might be best for industry or even for employees." The solution, it said, must come from the Congress.

The Congress, after exploring the entire operation of the Wagner Act in extensive hearings in 1947, found that the Board's policies on unionization of supervisors not only created a divided loyalty on the part of supervisors but also gave rise to disputes and interference with production which were contrary to the objectives of the act. Referring to the problems created by the Board's decisions, the House committee stated in its report that employers "are entitled to loyal representatives in the plants; but when the foremen unionize, even in a union that claims to be 'independent' of the union of the rank and file, they are subject to influence and control by the rank-and-file union, and, instead of their bossing the rank and file, the rank and file bosses them."

Section 2 (3) of the LMRA, therefore, excluded supervisors from the protection of the act, and section 14 (a) provided that employers should not be required to bargain collectively with supervisors under any law, national or local. It should be noted, however, that these sections do not prohibit organizations of supervisors but merely remove from employers any legal compulsion to deal with such organizations.

The Board has given these provisions effect by holding that persons who actually supervise one or more other employees or have authority to do so will be excluded from bargaining units, and there have been no discernible harmful effects upon unions.

On the contrary, the history of Ford Motor Co.'s bargaining with the Foremen's Association of America from 1941 to 1948, set forth in Senate hearings in 1949, illustrates the evils of requiring management to bargain with supervisors. That company had 14 foremen's strikes during the 7 years of bargaining, whereas it had none either before or after that period. Furthermore, after discontinuing bargaining, it was able to place far more responsibility and authority in its foremen and give them a much greater part in the management of the company's operations.

The hopeless conflict that may occur when foremen unionize is illustrated by the Board's ruling in a recent case where a supervisor merely stood at a plant window and observed a union rally in the public street and took notes. The Board held that such conduct constituted unlawful surveillance and interference by the employer on the ground that "the employees would be justified in assuming that it is being done for the purpose of subjecting them to economic reprisals for participating in the union rally." If this same supervisor could join the union, attend its meetings, and take notes, the employer would be open after every meeting to charges of surveillance and interference against which he could not protect himself. This is only one example of the irreconcilable conflicts

which resulted in Board vacillation on this issue and complete confusion under the Wagner Act.

Most unions have traditionally been opposed to admitting foremen or other management representatives to their midst as members. Walter P. Reuther, testifying before the Senate's War Investigating Committee in 1945 when he was vice president of UAW-CIO, was asked whether "it would be bad for labor relations to have foremen in your union." He replied "Definitely. I don't think you can represent both labor and management at the same time."

It is entirely possible that the outlawing of the closed shop has changed union thinking on this subject, since union foremen who are sworn to give every preference to union members represent an effective substitute for the closed shop from the union standpoint. From the employer standpoint they are even worse in some respects, for they would result in a concealed closed shop in which an employer could not rely on his foremen to hire for merit or discharge for incompetence. In the Chicago Typographical Union case the Board and the court of appeals found that the unions insistence on union foremen "was a very important part of their scheme for the maintenance of closed shop conditions" and thus violated the act. The Supreme Court denied certiorari on this issue. Furthermore, the court of appeals relied on the fact that the foremen were the only recognized authority "to give orders directly to the employees." Obviously, any supervisor with authority to assign work or to direct other employees is in a position to favor members of his union and, by discreet discrimination, to bring about the discharge of others whether or not he has actual authority to discharge. Thus suggestions for limiting the present definition of "supervisors" to exclude persons whose authority is limited to assigning work or directing employees would not only mean a partial return to the Wagner Act conditions which led to the present exclusion of supervisors, but would also defeat other purposes of the act.

5. SECONDARY BOYCOTTS

Prior to the Taft-Hartley Act, the secondary boycott was one of the costliest and most damaging weapons used by unions, and consequently one of the most effective. By means of the secondary boycott they could spread labor disputes to neutral employers and their employees, depriving the latter of work and the former of business, often to the point of liquidation. These widespread stoppages not only caused great inconvenience and hardship to the public; they also cut down production and thereby resulted in higher unit production costs and consequently higher prices to the public. This entire destructive chain of events was set in motion solely in order that a union might exert tremendous indirect pressure on another employer with whom it had a dispute—pressure in addition to that already exerted by the primary strike, primary picketing, and other means used directly against the employer involved.

Responding to public opinion, the Congress determined that this was a wholly unjustifiable practice, and declared it in section 8 (b) (4) an unfair labor practice for a labor organization to engage in a secondary boycott.

That section has worked well in most respects, so far as it goes. During the first 5 years of the act, 1,166 secondary boycott charges were filed against unions and in the great majority of these cases the boycott was terminated without legal proceedings. Doubtless the section also prevented many more boycotts from being initiated.

During this period, however, unions have found a number of loopholes in the secondary boycott section as construed by the NLRB and the courts. Unless these are eliminated, they will no doubt be exploited by unions to greater and greater advantage as time goes on and the section will thus become correspondingly less and less effective. These loopholes include:

(a) The "situs" test, under which a union is permitted to conduct boycotts at secondary premises whenever it can find trucks or equipment of the primary employer there. *Moore Dry Dock Company* (92 N. L. R. B. 547). Obviously the union's strategy and purpose in such cases is to induce or encourage the employees of the secondary employer to refuse to work. In practical operation this has all the effects which the secondary boycott provisions were designed to eliminate. Whether the Board would permit employer discipline of the secondary employees for refusing to cross such an ambulatory picket is not clear.

(b) The tenuous distinction drawn in determining whether a boycott induced concerted action by a group or individual action by members of the group. *NLRB v. International Rice Milling Company, Inc.* (341 U. S. 665). The effect of the boycott is the same in either event.

(c) The exemption accorded to unfair lists and to boycott instructions given in union meetings. *Western, Inc.* (93 N. L. R. B. 336). By such means a union can instruct employees to engage in a secondary boycott and yet not "induce or encourage" them within the meaning of the act.

(d) The exception of secondary boycotts established by union coercion of employers as distinguished from union inducement or encouragement of employees. *Arkansas Express, Inc.* (92 N. L. R. B. 255). Under this exception, a union may threaten secondary employers with illegal strikes and picketing unless they boycott a primary employer, and if the union succeeds without having to carry out its threats the resulting secondary boycott is lawful.

(e) The "hot cargo" contract, which permits a union to boycott struck goods or nonunion goods without violating the act. *Conway's Express* (87 N. L. R. B. 972); *Conway's Express v. N. L. R. B.* (195 F. 2d 906). For all that appears from the decisions thus far, a union may not only make and enforce such contract but may also strike to force employers to agree to them.

Obviously these loopholes are large enough that any well-informed union can shape its conduct accordingly and establish a secondary boycott not only free from legal restraint but actually protected by law. Substantial strengthening of the secondary boycott section is essential to prevent this result.

It has been proposed, however, particularly in S. 665, to relax the section to permit secondary boycotts against so-called struck work, or in the words of that bill, "work which because of a current labor dispute between another employer and his employees is, for the duration of such dispute, no longer being performed by the employees of such other employer."

This would open the door wide for secondary boycotts, and it would be a dull union indeed that could not get its case through. To cite an example—most manufacturers obtain at least part of their materials and components from other firms. Each time an order is placed it is with another employer. If such other employer's employees go on strike, work on the order would be struck work as defined above. Consequently it could be boycotted, with the result that the order and the work thereon could not be transferred and performed by any other supplier. This could assure the success of all strikes and the failure of all business.

Furthermore, while the plea that unions should be permitted to boycott struck work has a certain superficial appeal, it cannot stand up under analysis. In every such case the secondary boycott has either or both of two purposes: (1) To exert indirect pressure on a primary employer to force him to accept union terms, or (2) to coerce the employees of a primary employer to join the boycotting union, whether such employees are nonunion or are already affiliated with a different union. In either event, it falls into the classic pattern of a secondary boycott with all the attendant evils which the Congress sought to eliminate. In the first situation, labor disputes are broadened to injure innocent bystanders. In the second situation not only is the same true but in addition the boycotting union coerces the employees of the primary employer in the exercise of their rights under section 7 to organize, to select a representative of their own choosing, or to refrain from organizing or other concerted activity if they prefer.

Rather than being thus weakened, the secondary boycott provisions should be clarified in such manner as to effectuate the original congressional purpose which has been circumvented by the interpretations discussed above.

6. INJUNCTIONS

In section 10 (j) and 10 (l) of the LMRA Congress made the remedy of injunction available to enforce the unfair-labor-practice provisions and effectuate the purposes of the act.

Section 10 (j), applicable to both employer and union unfair-practice cases, permits the Board, but not a private party, to petition a Federal court for an injunction where the Board deems such action appropriate because of irreparable damage or other reasons.

The secondary boycotts prohibited by section 8 (b) (4) (A), (B), and (C), however, almost invariably cause irreparable damage to innocent employers and employees who are drawn into disputes in which they have no interest, in addition to causing wholly disproportionate injury to the public through the pyramiding and widening of disputes. Consequently, the injunctive remedy is necessary to stop such damage in its early stages. The Congress accordingly directed the Board to petition for an injunction where such violations are charged and the Board has reasonable cause to believe that the charge is true.

Major labor organizations have attacked these provisions and demanded that they be eliminated. Their complaint is twofold. First they attack the injunction on principle, stating in the words of CIO President Walter P. Reuther that it is "immoral and unfair." Secondly, they attack it in practice, charging that it defeats union purposes and results in "government by injunction." Let us examine these charges.

Notwithstanding these resounding catch phrases expressed by some union leaders, many unions have shown an ability to rise above principle and resort to this same "government by injunction" they so soundly condemn, whenever it suits their purpose or proves to be an advantage. The annual reports of NLRB for the past 5 years disclose 31 section 8 (b) (4) (A), (B), and (C) charges filed by unions against each other. (Annual reports, NLRB, 1948-51 inclusive, appendix, Table IA 1952 data obtained from NLRB.) Who are these unions that do not consider it "immoral and unfair" to file charges initiating injunction proceedings against another union? Examination of the injunction cases for the last 2 years, as listed in the Board's report for the year 1951 (appendix table 21) and similar data provided by the Board for the year 1952, discloses the following instances of injunctions issued against one union on charges filed by another:

Case No	Charging union	Union enjoined
21-CD-19.....	International Association of Machinists.	AFL Carpenters and Joiners
20-CB-129.....	CIO Longshoremen's & Warehousemen's Union	AFL Teamsters
19-CC-28.....	CIO Packinghouse Workers.....	CIO Longshoremen's & Warehousemen's Union
19-CC-29.....	AFL Alaska Fish Cannery Workers of the Pacific.	Do
2-CB-828.....	CIO Brewery Workers.....	AFL Teamsters
17-CC-15.....	AFL United Automobile Workers.....	Do
10-CC-49.....	AFL Operating Engineers.....	UMW District 50
13-CA-1063.....	CIO Packinghouse Workers.....	AFL Longshoremen's Association

Leaving the point of principle and going to the second charge—that in practical operation injunctions prevent unions from achieving their purposes and result in government by injunction—we might expect from this charge to find that thousands of strikes and picketings have been stopped by injunctions under the LMR.A. Again, however, the record is to the contrary. The Board's reports show an average of 12 injunctions per year or a total of exactly 59 injunctions issued against unions in the 5 years from August 1947 to July 1952 (Summary Table of Injunction Litigation, appearing in NLRB Annual Reports for 1948 (p. 84), 1949 (p. 134), 1950 (p. 197), 1951 (p. 280). 1952 report not yet published but data furnished by Board).

These 59 injunctions represent just about half of the 125 cases in which the Board petitioned for injunctions during the same 5-year period. In the other 66 cases no injunction was issued, either because the unlawful conduct was discontinued or because a court of equity, in its discretion, declined to grant an injunction. Thus it is apparent that the courts affords full and adequate protection to the rights of unions and there is no reason to change the present mandatory provisions of section 10 (1). Furthermore, this section leaves a great deal of discretion in the NLRB, as indicated by the fact that the Board petitioned for injunctions in only 125 cases in the first 5 years of the act, as mentioned above, although during the same period there were 1,166 secondary-boycott charges filed against unions under section 8 (b) (4) (A), (B) and (C)—the type of charges which are subject to the so-called mandatory-injunction provisions of section 10 (1). (See NLRB Annual Reports, appendix table 1A 1952 report not yet published, but data furnished by Board). Thus, even under the so-called mandatory-injunction provision, 1,166 charges resulted in the filing of only 125 petitions for injunctions, and these resulted in the issuance of only 50 injunctions. Clearly, this record will not support the charge of "government by injunction." At the same time, there has been no suggestion from any quarter of any other remedy adequate to protect the rights of all concerned against unlawful acts before irreparable injury results.

7. DUTY TO BARGAIN DURING TERM OF A CONTRACT

In its construction of section 8 (d) of the Taft-Hartley Act, it is our judgment that the National Labor Relations Board has disregarded not only the express language of the statute but also compelling legislative history that the com-

pulsory duty to bargain was fulfilled for the entire period of a contract executed for a fixed term, except, of course, as the contract otherwise provided.

As is commonly known, the Wagner Act required employers to "bargain collectively" with the representatives of their employees but did not attempt a statutory definition of the term.

That Congress, in the Wagner Act, contemplated compulsory collective bargaining to result in the making of collective agreements stabilizing employer-employee relations for the duration of their terms is clear. As was stated in House Report 1147, 74th Congress, 1st session, p. 20:

"As has frequently been stated, collective bargaining is not an end in itself; it is a means to an end, and that end is the making of collective agreements stabilizing employment relations for a period of time, with results advantageous both to the worker and the employer."

It is equally clear that Congress, in the Wagner Act, intended that contracts flowing from good-faith negotiations should serve to relieve the employer of the necessity of bargaining over terms and conditions of employment during the life of a mutually acceptable contract fixing for a time certain the wages, hours, and other conditions of employment which are to prevail in the plant. This is the only fair inference to draw from this statement contained in Senate Report 573, 74th Congress, 1st session, p. 13:

"The object of collective bargaining is the making of agreements that will stabilize business conditions and fix fair standards of working conditions."

Relying upon the foregoing excerpts from the committee reports explaining the Wagner Act, the Supreme Court said in *NLRB v. Sands Mfg. Co.* (306 U. S. 332):

"The legislative history of the [Wagner] act goes far to indicate that the purpose of the statute was to compel employers to bargain collectively with their employees to the end that employment contracts binding on both parties should be made"

Similarly, to the effect that the collective-bargaining agreement was intended to fix and stabilize wages, hours, and other conditions of employment for the life of the agreement is this statement by a United States circuit court of appeals in *NLRB v. Highland Park Mfg. Co.* (1940; 110 F. 2d 632), after citing and quoting from the Sands case, supra:

"The purpose of the written trade agreement is not primarily to reduce to writing settlements of past differences but to provide a statement of principles and rules for the orderly government of employer-employee relationships in the future. * * * Wages may be fixed by such agreements and specific matters may be provided for; but the thing of importance is that the agreement sets up a modus vivendi under which employer and employee are to carry on"

In light of the foregoing statements by the congressional committees and appellate courts, there would appear to be little doubt as to the congressional purpose of bringing the parties together in a good-faith effort to negotiate a satisfactory agreement embodying the conditions of employment which were to govern the relationship in the future. Certainly, it would seem, both the House and Senate committees could not stress the stabilizing effects of a collective-bargaining contract and at the same time contemplate permitting a situation whereunder one party could in effect renounce the agreement and unilaterally compel the other party to negotiate, during its term, on matters not included in the contract. Such a result is obviously in contravention of the whole purpose of the statute which "contemplates the making of contracts with labor organizations. That is the manifest objective in providing for collective bargaining" (*Consolidated Edison Co. v. NLRB*, 305 U. S. 197). Yet that identical power to disrupt the stabilizing effect of a collective agreement was accorded to labor organizations as a result of decisions by the National Labor Relations Board. That Board, notwithstanding the legislative history and judicial philosophies discussed above, held that the "continuing" duty to bargain included the duty to negotiate with respect to "modifications" in an existing contract, presumably even in the absence of a reopening clause. (See, e. g., *U. S. Automatic Corp.*, 57 N. L. R. B. 124.)

Moreover, the NLRB, as early as 1939, went so far as to state that an employer must bargain concerning a proposed new contract only 1 month after a contract had been signed. In *Lone Star Gas Co.* (18 N. L. R. B.), the Board stated:

"The existence of an agreement between the respondent and the unions does not relieve the respondent from its obligation to bargain collectively, nor does the signing of a collective agreement exclude from the possible subject matter of collective bargaining proposed changes in the agreement or the substitution of an entirely new agreement * * * it is clear that the employer may not

categorically refuse to consider the proposals solely on the ground that he already has a signed agreement with the union presenting the proposals."

The Lone Star Gas type of NLRB decision exemplifies the manner in which the Wagner Act, as administered, thwarted the national policy of attaining stability through collective-bargaining contracts. The Lone Star Gas case also typifies the kind of administration which ultimately led to the amendments to the Wagner Act contained in the Taft-Hartley Act.

In the Taft-Hartley Act Congress moved in two ways to clothe the collective-bargaining contract with the dignity and status generally accorded other types of written agreements.

First, Congress made collective contracts mutually and legally binding and enforceable. As stated by the Senate committee in Senate report No. 105, 80th Congress, 1st session, page 17:

"Statutory recognition of the collective agreement as a valid, binding, and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreement, and will thereby promote industrial peace."

With respect to congressional action making collective contracts binding and enforceable, there is no indication whatsoever that Congress contemplated that such contracts should be subject to unilateral reopening at any time for negotiation of matters not covered therein. On the contrary, the above excerpts from the Senate committee report indicate that Congress intended that a contract once made should fulfill for the life of the contract the compulsory duty to bargain collectively on wages, hours, and other terms and conditions of employment. Otherwise, there could never be any assurance that a contract would stabilize industrial relations and thus assure freedom from economic warfare for the terms of the agreement as the Senate committee sought to do by making it enforceable.

The second way in which Congress sought to make the collective agreement an instrument of industrial peace during its lifetime was to include, in section 8 (d), a statutory definition of the duty to bargain collectively. For all practical purposes this definition is divided into two parts, (1) a general provision which defines the duty in negotiations looking toward the execution of an agreement or the settlement of differences arising over the application, interpretation, or administration of an existing agreement, and (2) a proviso which defines specifically the duty to bargain where a collective-bargaining contract is in effect.

Under the general definition it is made the mutual obligation to meet and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party * * *. It is thus quite clear that the statutory duty to bargain in situations where no contract is in existence, or to bargain with respect to an existing contract's interpretation, application, or administration, is almost exactly the same as was developed under the Wagner Act through administrative and judicial application of that law to specific situations. The Wagner Act duty also extended to the modification of an existing contract (See, for example, *U. S. Automatic Corp.* (57 N. L. R. B. 124), where the NLRB said that the employer was under the duty to bargain continuously concerning the application, interpretation, administration, or modification of an existing agreement. Therefore, the specific definition of the duty to bargain, where a collective-bargaining agreement is in effect, is extremely important in determining the extent, if any, to which Congress altered the duty to bargain as developed by the NLRB under the Wagner Act.

Under the specific proviso to section 8 (d) relating to situations "where there is in effect a collective-bargaining contract," Congress said that no party thereto shall terminate or modify such contract except in compliance with four specified duties and procedures (not pertinent to this analysis). It is then expressly provided that the specified duties so imposed "shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract."

On its face, therefore, the specific statement regarding the duty where a contract is in existence strongly indicates that Congress intended to relieve either party, during the life of a contract, of the compulsory duty to bargain

with respect to matters not covered by the agreement except where bargainable under a reopening clause (See, e. g., House report on H. R. 3020 and the conference report, H. Rept 510, 80th Cong., 1st sess., p. 35.)

In the *Allied Mills* case (82 N. L. R. B. 99), decided April 7, 1949, the NLRB interpreted the 8 (d) proviso as merely having the effect of removing, during the term of an agreement, the obligation of an employer to bargain concerning subjects specifically covered by the contract. With respect to bargainable subjects not covered by, or mentioned in, the contract, it was held that the employer was still compelled "to bargain continuously." (See also *Jacobs Manufacturing Co.* (94 N. L. R. B. 1214), *NLRB v Jacobs Mfg. Co.* (196 F. 2d 680).) In effect, therefore, the Board, despite the most careful and extensive congressional consideration of the Wagner Act and the amendatory legislation, as well as compelling legislative history to the contrary, was holding that Congress used one full page of the new law to define the duty to bargain collectively merely to restate the rules of decision arrived at under the Wagner Act, the very law it was seeking to amend.

It seems clear that the Labor Board's interpretation of the proviso to section 8 (d) is open to serious question, both as a matter of law and as a matter of true expression of the national policy of promoting stability of relations by means of collective-bargaining contracts binding upon both parties.

Any interpretation of the proviso which makes the words "modify" and "modification" apply only to matters specifically included in an existing contract would seem to be an unwarranted and unnecessary invitation to make unstable that which Congress, on the face of the proviso, desired to make stable. Such an interpretation, moreover, overlooks entirely the fact that the general duty to bargain requires a contract embodying any agreement reached "with respect to wages, hours, and other terms and conditions of employment." If such conditions are reflected in a contract, the law says clearly that neither party must even "discuss" a "modification" except pursuant to contract reservation. For, according to both legal and standard dictionaries, the word "modification" means "a change"; thus to make, or seek to make, a change or changes in "wages, hours, and other terms and conditions of employment" means that an existing contract establishing such matters for a fixed term must necessarily be modified to accomplish such change. This, the law says, is not required in order to fulfill the compulsory duty to bargain.

S. 1310, introduced by Senator Ives, of New York, proposes to delete from the present law the proviso in section 8 (d) relating to the duty to bargain during the term of an existing contract. In place thereof, S. 1310 would substitute the following: "and the duties so imposed shall not be construed as requiring either party to a contract for a fixed period to discuss or agree to any modification of terms and conditions of employment, whether or not embodied in such contract, prior to the expiration of such period, unless the contract contains reopening provisions providing for modification of such terms and conditions of employment prior to the expiration of such period."

As we understand Senator Ives proposal, it would merely make clear that which was sought to be accomplished when the Taft Hartley Act was enacted. Under it, parties would still be required to bargain with respect to administration of and questions arising under existing contracts for fixed periods, as well as with respect to matters dealt with in "reopening" clauses. Thus the stability sought to be accomplished by the execution of a contract would be achieved while preserving to the parties complete freedom, as in other types of contracts, voluntarily to change such contract provisions as they deem fit and proper. Accordingly, we strongly urge that S. 1310 be enacted.

8. FEDERAL VERSUS STATE JURISDICTION

An extremely serious question which has arisen under Federal statutes regulating industrial relations is the extent to which State authority and jurisdiction have been foreclosed with respect to industries "affecting commerce."

In upholding the Wagner Act as a constitutional exercise of the congressional power to regulate commerce, the Supreme Court, in *NLRB v. Jones & Laughlin Steel Corporation* (301 U. S. 1), proceeded on the theory that the Federal statute was aimed only at industrial disputes, actual or potential, which had a direct immediate, and intimate impact upon interstate commerce. Thus the Court recognized that—

"Although activities may be intrastate in character when separately considered if they have such a close and substantial relation to interstate commerce that

their control is essential or appropriate to *protect that commerce from burdens and obstructions*, Congress cannot be denied the power to exercise that control." [Emphasis added.]

The Court also recognized, however, that the Federal jurisdiction over interstate commerce could not be pushed to the point of obliterating the distinction between matters of national and local concern and control. In this regard the Court said:

"Undoubtedly the scope of this power [over interstate commerce] must be considered in light of our dual system of government and *may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectively obliterate the distinction between what is national and what is local and create a completely centralized government. The question is necessarily one of degree.*" [Emphasis added.]

Thus, it seems clear, the Supreme Court was saying the constitutional basis for upholding the Wagner Act was that only activities which directly, immediately, and substantially affected interstate commerce came within the reach of Federal regulation. Whether these tests are present, the Supreme Court said, is a question "of degree." By referring to jurisdiction being a question of degree the Court, since it cited antitrust cases, must have meant that the Federal power must turn upon the "degree" of impact a labor dispute would have upon interstate commerce in the sense of the "substantiality" test used in cases arising under the Sherman Antitrust Act. Certainly it could not have used the phrase regarding "degree" in the sense that Federal power depended upon the degree of impact in a local geographical area. To take this construction would be to charge the Court with tearing down the very "distinction between what is national and what is local" that the Court said must be maintained if we were to avoid a "completely centralized government" (301 U. S. 37).

Through the influence of administrative interpretation under the Wagner Act of 1935, however, the scope of Federal regulatory power constantly expanded. Under that statute the National Labor Relation Board asserted jurisdiction over myriads of industries, both large and small, including insurance companies, banks, safety deposit companies, retail department stores, local transportation companies, local telephone companies, processors, converters, cooperative apartments, nonprofit charitable hospitals, nonprofit trade schools, detective agencies, local gas utility companies, local water utility companies, ice manufacturers, filling stations, citrus fruit growers cooperatives, cold-storage plants, dehydrating plants, greenhouses, and a laundry near a State line (for citations, see Tucker, Guide to National Labor Relations Act, 1947, Commerce Clearing House).

These cases illustrate the extent to which the Federal regulatory power has been applied to enterprises which most reasonable-minded people would consider to be primarily local in nature. In fact, it might well be contended that decisions of that character had pushed the Federal power to such an extreme as to destroy the distinction between national and local activities which the Supreme Court said in *NLRB v. J. & L. Steel Corp.*, *supra*, "is vital to the maintenance of our Federal system."

Notwithstanding this radical extension of Federal jurisdiction, the Supreme Court maintained that under the Wagner Act of 1935 Congress had "designedly left open an area for State control," *Allen-Bradley Local v. Wis. Emp. Rel. Bd.*, (315 U. S. 740), and that States were free to act so long as State laws did not stand as "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hill v. Florida* (325 U. S. 538).

After the subject matter of Federal regulation was extended by the Labor-Management Relations Act of 1947, the trend of decisions was to preclude States from regulating industries "affecting commerce" even though such industrial operations were primarily local in nature. (See *LaCross Telephone Corp v. Wis. Emp. Rel. Bd.* (336 U. S. 18); *Plankinton Packing Co. v. Wis. Emp. Rel. Bd.* (338 U. S. 953); *International Union v. O'Brien* (339 U. S. 454); *Amalgamated Association, etc. v. Wis. Emp. Rel. Bd.* (340 U. S. 383).)

Strangely enough, this judicial process of excluding States from the regulation of labor relations came about largely as a result of Congressional efforts to make clear that, as under the Wagner Act, States were not to be considered as having been foreclosed (or "preempted") from exercising their sovereign police power in experimenting to find ways and means of minimizing industrial disputes and protecting their citizens when such disputes arose. Thus, for example, Congress, in section 10 (a) of the Taft-Hartley Act, provided for ceding of jurisdiction to State agencies by the National Labor Relations Board and

made clear in section 14, that States were free, as they had been under the Wagner Act, to restrict, regulate, or prohibit contracts or other arrangements providing for union membership as a condition of employment. Yet the Supreme Court seized upon these provisions as indicating a congressional purpose to preclude the State of Wisconsin from legislating with respect to labor disputes in public utilities. Thus, in *Amalgamated Assoc., etc. v. Wis. Emp. Rel. Bd.*, supra, referring to the 1947 amendments, the Court said:

"Congress demonstrated that it knew how to cede jurisdiction to the States. Congress knew full well that its labor legislation 'preempts the field that the act covers insofar as commerce within the meaning of the act is concerned' and demonstrated its ability to spell out with particularity those areas in which it desired State regulation to be operative."

In earlier decisions the Supreme Court had expressly stated that neither in the Wagner Act nor the Labor-Management Relations Act had Congress seen fit to state specific rules as to the effects of such laws on State regulation of labor relations. For example, in *International Union v. Wisconsin Emp. Rel. Bd.* (336 U. S. 245, 1949), the Court said:

"Congress has not seen fit in either of these acts to declare either a general policy or to state specific rules as to their effects on State regulation of various phases of labor relations over which the several States traditionally have exercised control."

Nevertheless, as indicated in the decisions cited above, the Court seems to have proceeded on the theory that Congress had stated "a general policy" and "specific rules" to preempt States from regulating labor relations in industries affecting commerce. It did so notwithstanding the well-established principle that State police power is superseded by Federal legislation only where the repugnance or conflict is so "direct and positive" that the two statutes cannot "be reconciled or consistently stand together." See *Kelley v. Washington* (302 U. S. 1, 10).

Whether the Supreme Court has correctly interpreted the intention of Congress in the Labor-Management Relations Act is not relevant to the issue of the right of States to regulate within their boundaries various aspects of labor relations. The fact remains the Court's decisions are being interpreted by the National Labor Relations Board and State and Federal courts as having expressed the view that Congress had "preempted" the field of labor relations regulation in industries affecting commerce. This is made clear by the opinion of the National Labor Relations Board in the *Thayer Co.* case, 99 NLRB No. 165. In that case the National Board refused to recognize the validity of a Massachusetts State court injunction against violent picketing on the theory that the Federal jurisdiction over such matters was exclusive and the State had been preempted from the field. Thus, in its opinion, the NLRB stated:

"We hold that in deciding the issues before us in this case this Federal Board is in no respect bound by the decisions of the courts of Massachusetts, either as to the legality of the purpose of the strike or the legality of the manner in which the strike was conducted. The act has preempted the field of peaceful strikes affecting commerce. (*U. A. W. v. O'Brien*, 339 U. S. 454; *Amalgamated Ass'n. v. W. E. R. B.*, 340 U. S. 383.) The objectives of such strikes may be judged under the standards provided by the Federal act alone, and judgment may be made only by the agencies designated by Congress in the statute to make them. Consequently the State court had no power to proscribe the present strike on the ground that its objective failed to accord with Massachusetts' labor-relations policy. The legislative history of the 1947 amendments to the act shows that this Board, too, was given regulatory power over the area of nonpeaceful means employed in labor controversies. The Board was given this power not only to determine, for example, whether violence on a picket line was of such character as to justify discharge of strikers, but also for the purpose of deciding whether it coerced or restrained employees in the exercise of their statutory rights and thus constituted an unfair labor practice by a labor organization within the meaning of section 8 (b) (1) (A).

"Plainly, the Board is not bound by a decision as to the objectives of the strike which the State court had no power to make. Nor is it bound by the court's ruling respecting the character of the means. The act vests the Board with 'exclusive primary jurisdiction over all phases of the administration of the act'."

From this language it seems clear that the NLRB interprets the Federal statute, and the Supreme Court decisions, as precluding the States from regulating concerted activities even though the objectives of such activity might be contrary to State law and even though the means used would, except for preemption, be subject to the police power of the States.

The same tendency toward a "preemption" doctrine is developing in both State and Federal courts. For example, the Pennsylvania Supreme Court only recently has held that a lower court lacked jurisdiction to enjoin conduct which violated both Pennsylvania law and the Labor-Management Relations Act on the theory that the Federal remedy precludes any State action. *Garner v. Teamsters Union*, February 13, 1953, 31 LRRM 2392. See also *Dynamic Manufacturers Inc. v. Drivers Union* (U. S. D. C., E. D. Mich.), 30 LRRM 2161; *Nash-Kelvinator Corp. v. Building Trades Council* (U. S. D. C., W. D. Mich.), 30 LRRM 2466; *Capital Services Inc. v. NLRB* (U. S. C. A. 9), 31 LRRM 2326; *Russell v. UAW-CIO* (Ala.), 31 LRRM 2326.)

In the *Garner* case, *supra*, the dissenting Justice of the Pennsylvania Supreme Court felt that the congressional purpose had not been "clearly manifested" to exclude States from their "traditional and long-established" jurisdiction in the field of labor-relations regulation. He also said, "A sovereign State should not be deprived of any of its sovereign rights and powers except by the clear and express mandate of the Constitution or of the Congress or of the Supreme Court of the United States."

Adherence to this same principle prompted the dissenting Justices of the Supreme Court of the United States to say, in the Wisconsin Public Utility Strike Law case, *supra*: "Due regard for basic elements in our Federal system makes it appropriate that Congress be explicit if it desires to remove from the orbit of State regulation matters of such intimate concern to a locality as the continued maintenance of services on which the decent life of a modern community rests."

As indicated earlier, many people felt that Congress, in the Labor-Management Relations Act, had indicated an intention to enlarge rather than restrict the areas for State regulation. Clearly, however, the decisions show that this has not been the result. Consequently, as stated by the dissenters in the Wisconsin Public Utilities case, it is "appropriate that Congress be explicit" with amendments to make clear that Federal legislation is not designed to preempt State regulation of labor relations.

Bills introduced in both Houses of Congress deal in different respects with the problem of States rights in the labor field.

The Ives bill (S 1264) proposes to amend the Federal law so as to permit the National Labor Relations Board, "in its discretion," to decline jurisdiction where that Board feels the effect of any labor dispute on commerce is not sufficiently substantial to warrant Federal action. When jurisdiction had been declined by NLRB, State agencies would be free to assume and exercise jurisdiction over such labor disputes. In addition, the National Board could, by agreement, cede to State agencies jurisdiction over labor disputes and representation questions even where they might substantially affect commerce.

This bill, while better than existing law as interpreted and applied, is designed to meet the objections expressed by the New York Labor Relations Board and would be of little assistance to States which do not have the same problems as exist in New York.

Under the proposal, the National Board could still define its own jurisdiction since no effort is made to draw the line beyond which the Federal power is not to extend. In our judgment, this is a serious shortcoming in S. 1264. In addition, State agencies and State courts, absent a ceding agreement, could not act in any instance until the NLRB, "in its discretion," had declined to take jurisdiction. The potentials for delay in such circumstances are obvious and could result in irreparable damage or substantial loss of rights pending a jurisdictional decision from Washington. This is not the "due regard for the basic elements in our Federal system" referred to by the minority in the Wisconsin Public Utilities Case.

The Kearns bill (H. R. 4274) proposes to grant States "concurrent" jurisdiction over representation questions whenever there is no NLRB certification in force and effect covering any of the employees in the unit which the State board finds appropriate for bargaining. It would also permit States to exercise jurisdiction and enforce "valid" State statutes in labor disputes until the National Board "elects to exercise its jurisdiction over the particular controversy involving the same parties and issues as those before the State agency or court."

This proposal is subject to the same basic objection as the Ives bill since Federal jurisdiction would still depend upon the discretion of the National Labor Relations Board. Presumably under this proposal a State court or agency may have heard evidence and issued final orders in a "particular controversy" and, if the result was not to the liking of the NLRB, it could "elect" to exercise its jurisdiction and decide the controversy differently. In our judgment, the lines

between State and Federal jurisdiction should be more sharply drawn, as a matter of law rather than administrative discretion.

The Goldwater and Lucas bills (S. 1161 and H. R. 3055) propose that nothing in the Federal statute "shall be construed to nullify the power of any State or Territory to regulate or qualify the right of employees to strike or picket."

These bills are commendable in that they seek to preserve to the States their traditional police power over local incidents in labor disputes. In light of some of the decisions discussed earlier, however, it is questionable whether they would achieve their purpose since they are limited to State regulation or qualification of the right to "strike or picket." Equally important aspects of labor disputes are boycotts, force, violence, fraud, intimidation, etc., which, depending upon interpretation, might not be considered included in the power to regulate or qualify.

In balance, it is our judgment that Congress, "having due regard for basic elements in our Federal system," should shorten the reach of the Federal Government, as that reach has developed under the Wagner and Labor-Management Relations Acts, and draw sharp lines for application of the Federal power in labor-relations matters. We also believe that the Congress should explicitly provide that Federal law shall not operate so as to prevent States from applying their traditional sovereign police power in relation to the regulation and qualification of strikes, picketing, boycotts, force, violence, fraud, and similar concomitants of labor disputes. In so doing we urge that Congress specifically state (1) that nothing in the Federal law shall be construed as "preempting" State regulation in the field, and (2) that no State law or public policy shall be construed as conflicting with any provision of the Federal statute unless such alleged conflict is so direct and positive as to be completely repugnant to the Federal purposes.

9. HEALTH AND WELFARE PLANS; OTHER PAYMENTS

It is well known that section 302 of the LMRA, prohibiting payments by employers to representatives of their employees, was designed to stop certain abuses which had developed with the growth of powerful unions.

One of the purposes, in the words of the Senate report, was to prevent the racketeering practices and extortion which are likely to occur when unions and their agents are permitted to demand and collect payments from employers for so-called protection or other purposes. Disclosures in the recent New York waterfront investigations show that such abuses still exist and that this section needs stronger enforcement if not stronger provisions.

Another purpose was to protect employees against improper wage deductions. The permissible deduction of membership dues in a labor organization when authorized by an employee was greatly broadened by the interpretation issued by an Assistant Attorney General in May 1948 that assessments, being incidents of membership, should be considered as falling within the classification of membership dues. The proposal of S. 658 to make clear that union fines, assessments, penalties, and similar items could not be checked off would appear merely to express more specifically the original intent of Congress and to be desirable.

The most serious deficiency in the present section, however, seems to be in its failure to provide a sound, permanent solution for the problem of union health and welfare plans. The act does not take cognizance of the fact that the establishment and administration of pension and welfare funds is entirely unsuited to the collective-bargaining procedure as now required. Its provisions relate primarily to the administration of such funds with little real protection afforded to the public or to an individual employee's interest in a fund. There are indications that some plans have established benefits on an actuarially unsound basis, disregarding the long-term security of the fund and jeopardizing the interests of employees in order to gain immediate favor for the union. Furthermore, there is no assurance against diversion of such funds to other purposes which might not conform with the desires of employees. Until this situation is remedied, unions can continue to use such funds to achieve their own purposes and to control employees rather than to promote their welfare.

Moreover, unions have devised ways of avoiding the purposes of this section by having employers make payments to insurance companies which then pay out funds at the direction of a union which retains complete control of the administration of the plan, including the determination of claims and the amount and duration of benefits. It is possible that under such arrangements a union gives up nothing except the bare custody of the fund, retaining complete domina-

tion and control over its disbursement so that it can use the fund to enhance its own power over employees. A plan apparently containing at least part of these features is described in *Potlatch Forests, Inc. v. International Woodworkers of America* (188 F. Supp. 906 (U. S. D. C., N. D. Idaho)). There a collective-bargaining contract provided for a wage increase but also provided that it would be deducted by the employer and paid to a health and welfare plan which the union established by contract with an insurance company. Thereafter, the court stated, "Under the instruction of said union, the plaintiff (employer) paid out certain moneys to certain physicians and to the said insurance company according to the terms of the said benefit program." More than a hundred employees objected to the deductions from their paychecks and served written notice on the employer to stop further deductions and to refund amounts already withheld. In the employer's suit for a declaratory judgment the court upheld the contractual arrangement and authorized continued deductions from the pay of the unwilling employees.

There are well-founded, practical reasons why employers should not be compelled by law to bargain collectively with respect to employee-benefit programs. Compulsory bargaining over employee-benefit plans can impose an intolerable burden on the collective-bargaining process, threaten its effectiveness, magnify the problems of contract administrations, and open up additional areas of labor-management conflict.

If the section on joint administration of welfare funds is to be revised, we recommend that the act make it clear that compulsory collective bargaining on employee-benefit programs is not required. Furthermore, we urge that rights of employees in health, welfare, and pension funds be fully protected in the event that any changes are made in the provision concerning joint administration of welfare funds.

10. NATIONAL EMERGENCIES

When labor legislation was under consideration in 1947, the Nation had recently experienced a large number of labor disputes of national emergency status throughout World War II and the postwar period. The Government had dealt with these cases through the War Labor Board which issued advisory orders, and through special panels or boards appointed to make recommendations in specific disputes. This experience had demonstrated clearly that the mere creation and existence of such boards discourages, undermines, and prevents operation of the normal processes of collective bargaining. It had shown that at least one party to each labor dispute hopes to gain advantage by creating an emergency, taking the case before a Government-appointed board, and obtaining favorable recommendations or advisory orders. It had shown further that all the prestige and weight of the Government are put into play to bring about acceptance of recommendations or to enforce advisory orders, with the result that disputes were settled by compulsion and not by voluntary collective bargaining.

It was against this background that Congress adopted the present national emergency provisions. These provisions, contained in sections 206-210 of the act, establish special procedures for dealing with actual or threatened strikes or lockouts affecting an entire industry or a substantial part thereof where, in the opinion of the President, such stoppage will imperil the national health or safety. The President may appoint a board of inquiry to report on the facts of the dispute and the positions of the parties, but without recommendations. After the board reports, the President may direct the Attorney General to petition for an injunction against such stoppage. The injunction may remain in effect for 80 days.

Despite the administration's open hostility to the LMRA and its national emergency provisions from 1947 to 1953, the President reluctantly invoked these provisions in 10 cases where strikes imperiled the national health and safety. Two of these involved the atomic-energy program. Industries involved in the other cases included meat packing, telephone, copper mining, maritime (twice), and bituminous coal (three times). Settlement was reached after appointment of a board of inquiry and without the issuance of an injunction in three instances. In most of the others, settlement was reached during the 80-day injunction period or shortly thereafter. In only one was there a strike for any extended period of time after the injunction was vacated.

Opponents of the act have undertaken to explain away this successful record on the ground that the settlements did not result from the efforts of the boards of inquiry or from the injunctions, but rather from collective bargaining, assisted by mediation and conciliation, which continued during the injunction

period. This, of course, was what Congress sought to achieve by avoiding governmental interference through recommendations or other means, and encouraging voluntary settlement of disputes through collective bargaining without interruption of work and production.

The wisdom of Congress in adopting this method in the LMRA is amply demonstrated by the record of the past 6 years. No evidence has been submitted to justify the position of those who would repeal the national emergency provisions and return to the old method. Experience repeated itself in the 1952 steel dispute when the President declined to utilize the LMRA, but referred the dispute to a board for recommendations which led to an 8-week strike with serious consequences to the Nation's defense and economy.

Public opinion surveys conducted by Opinion Research Corporation of Princeton, N. J., have shown that over the years since Taft-Hartley more than 80 percent of the public have favored the national emergency injunction provisions for dealing with strikes endangering the national welfare, and that at present 87 percent are in favor of retaining these provisions.

The present provisions, having operated with marked success and gained strong public support despite the open opposition of the President charged with their execution seem highly worthy of a fair and impartial trial under the new administration.

That the provisions, although limited to national emergencies, are also flexible enough to deal with all types of situations with imperil the Nation is evidenced by the recent decision in *U. S. v. United Steelworkers* (— F. 2d —, 31 I. R. R. M. 2409). This was the second case in which the national emergency provisions were utilized to stop a strike in the Atomic Energy program. The Steelworkers called a strike at a plant of American Locomotive Co. producing vital materials and equipment for the Atomic Energy Commission, items requiring a highly specialized process which no other plant was equipped to perform. After the strike had lasted more than 3 months, the President invoked the national emergency provisions and the Attorney General instituted injunction proceedings.

The union contended that the provisions were unconstitutional and also that the strike at a single plant was not one which "affects an entire industry or a substantial part thereof" within the meaning of section 208 of the act. Both the Federal district court and the Court of Appeals for the Second Circuit upheld the constitutionality of the section and found it applicable in the instant case, with the latter court saying:

"By using 'affects' instead of some more confining word as regards the strike or lockout which might be enjoined it (the Congress) made, we think, the test of applicability not merely the extent of the strike within an industry but the extent of the effect of a strike upon an industry and the national health or safety."

As thus construed in accordance with a rule of reason, the provisions seem restrictive enough to limit their use to genuine national emergencies and at the same time flexible enough to deal with all such emergencies.

11. SUMMARY CONCLUSIONS

This statement is intended to supplement the testimony presented to this committee on behalf of the National Association of Manufacturers by George W. Armstrong, chairman of the association's industrial relations committee. Accordingly, the present statement does not undertake to cover all of the recommendations of the association, but is limited to those matters with respect to which legal analysis seems especially appropriate and helpful.

In summary of the points covered in the supplemental statement, it is recommended:

1. That the prohibition against voting in representation elections by permanently replaced strikers be retained and clarified to eliminate any distinction between economic and unfair-practice strikers.
2. That the prohibition against striking during the 60-day waiting period following notice of a desired change in a contract be retained.
3. That the right of free speech be protected and preserved so that employers may freely discuss union matters with their employees at all times, absent threat of reprisal or promise of benefit.
4. That the present prohibitions against the secondary boycott be retained and clarified to close loopholes developed by interpretation and thereby effectuate the congressional intent.

6. That the present provisions for enjoining unfair labor practices be retained.

7. That the statutory duty to bargain be clarified to eliminate any legal requirement to bargain on changes during the term of a contract.

8. That the reach of the Federal law be restricted and the sovereign power of the States be given greater recognition.

9. That compulsory bargaining on health and welfare plans be eliminated, and the interests of employees be fully protected in any revision of the provisions' joint administration.

10. That the national emergency provisions be retained and given a fair and adequate trial.

Mr. GRAHAM. A letter from George R. LeSavage, president, New York State Restaurant Association, New York City.

Chairman McCONNELL. Without objection, the letter will be made a part of the record.

(The letter referred to is as follows:)

NEW YORK STATE RESTAURANT ASSOCIATION, INC.,
New York, N. Y., May 8, 1953.

HON. SAMUEL McCONNELL,

*Chairman, Committee on Education and Labor,
House of Representatives, Washington, D. C.*

DEAR MR. McCONNELL: My name is George R. LeSavage and I am president of the New York State Restaurant Association, office of which is located at 369 Lexington Avenue, New York City, N. Y.

I am appearing before you for the purpose of inviting your attention to certain aspects of the administration of the Taft-Hartley law in this district. For a number of years a restaurant union and its international in this city have been attempting to organize one of the large service chains which operates restaurants in several States. From that experience this company has gained much practical knowledge as to certain abuses which should be corrected in any revision of the law.

After an intensive drive by the unions which lasted almost a year, the union leaders and organizers asked for an informal meeting with management officials. At this meeting, the company was informed by the unions that unless they were recognized, the company would be confronted with an organizational picket line in all States where the company operates. The company answered that it would not recognize the unions unless there was a certification based upon Board election. The unions emphatically stated that there would be no election in this case. Right here and in the light of this experience, I offer our first suggestion and recommendation: No sound reason can be offered why organizational picket lines in such circumstances should be permitted. A strike or a picket line should be a matter of last resort when no other peaceful or orderly means is available. An organizational picket line is today always carried on when other means are available namely, the process of election and certification. Moreover, a strike and a picket line in such circumstances settle nothing. Indeed, they defeat one of the primary purposes of the statute which is to confer a free choice on the employees.

The unions failed to carry out their threat of a strike. It then turned to a campaign of misrepresentation and exaggeration. This lasted some 6 months. Finally, the unions acceded to the employer's repeated requests for an election. The parties signed a consent stipulation for an election. The unions had, at first objected to the vote being taken in each one of the company's 38 stores, contending that undue influence might be exerted by the company if such a procedure was agreed to. This contention ignored the fact that the company had agreed there should be no electioneering in the stores on the day of the election. Certainly, an election at the stores would be far more convenient for the employees who work on all kinds of different shifts. Finally, there was an agreement by company, union and Board for an election at the stores. Two days after the booths were installed in the stores and after the watchers had been scheduled and briefed and after every preparation had been made for an election—and 2 days prior to the proposed election—the unions filed an unfair labor charge. The Board immediately and obediently canceled the election upon the mere issuance of the charge without the company in any way being consulted in the matter. Here we make our second recommendation. There seems to be no sound reason

why the Labor Board should so conveniently fall in with union tactics to prevent an election which the union fears it will lose. The very filing of these charges was foreshadowed by the threat of the union leaders some 6 months earlier when they stated: "There will be no election in this case."

The union campaign has now redoubled its efforts and propaganda. There were false claims that the union election had been canceled because of employer misconduct. After some months of this type of campaigning (in which the union made outright appeals to religious affiliation) the union leaders filed a new petition for an election. They have now stated that they have regional board assurances that the election shall not be held in the various stores. Of course, the conduct of elections on employer premises is a common practice in large factories and other employer premises where the convenience of workers is served. Here we make our third and fourth recommendations. There seems to be no sound reason for treating unions and employers differently. If the atmosphere is tainted by employers, it can be tainted by unions. Indeed, the unmitigated lies and misrepresentations of union propaganda in this case far exceed anything that a respectable employer would attempt. Moreover, there seems to be little reason in law or in sound policy for granting to the Board the power to find an employer guilty of something which does not amount to an unfair labor practice unless the unions, too, are found similarly guilty. It is only one-sided partisanship for the Board to continue its present policy of making this type of ruling only against employers.

During part of this campaign (many months ago) the company made use of employee meetings, to which it invited (but did not compel) employee attendance for the purpose of correcting some of the major misrepresentations circulated by the union leaders as union propaganda. Immediately, the union leaders seized upon the Bonwit-Teller doctrine as the basis of demanding (many months before an election was scheduled) the right to address the employees in the company's stores. Here we make our fourth recommendation. Under such circumstances the Board should not have the right to infringe employer-property rights by forcing the employer to make his facilities available for the purpose of union organizing.

Very truly yours,

GEORGE R. LE SAUVAGE,
President, New York State Restaurant Association.

Mr. GRAHAM. A letter to Hon. Otto Krueger from W. A. Bastedo, manager, Associated General Contractors of North Dakota, Bismarck, N. Dak.

Chairman McCONNELL. Without objection, the letter will be made a part of the record.

(The letter referred to is as follows:)

ASSOCIATED GENERAL CONTRACTORS OF NORTH DAKOTA,
Bismarck, N. Dak., February 24, 1953.

Representative OTTO KRUEGER,
House of Representatives, Washington, D. C.

DEAR REPRESENTATIVE KRUEGER: We have been informed by our national office in Washington that among the amendments to the Taft-Hartley Act which Senator Taft has introduced there is one which would, if enacted, nullify the right-to-work law now on our North Dakota books.

We are 1 of 15 States with such legislation, and we believe there are at least 2 more who are now seeking the passage of such legislation. We are sure that we do not have to go into great detail as to the reasons why we, in North Dakota, do not want to see any Federal legislation which will abrogate our right-to-work law. We are certain that you are well aware of the compromise labor bill which this association assisted in working out just a week ago with Senator Geelan's subcommittee on labor. The retention of the right-to-work privilege remains in our law and the new compromise bill was passed by unanimous vote in the senate. We expect that it will also pass by the required two-thirds majority in the house.

It would seem that amendments to the Taft-Hartley law should take the form of giving greater control over labor problems to the individual States rather than to force them to accept Federal legislation which surely would not fit into the economics of all the 48 States.

We trust you will give this matter your careful consideration and through your contacts with the members of the labor committees in Washington you will let them know how your constituents back home feel. Our very best regards.

Very truly yours,

W. A. BASTEDO, *Manager.*

Mr. GRAHAM. A letter from Charles Sattler,, commissioner, West Virginia Department of Labor, Charleston, W. Va.

Chairman McCONNELL. Without objection, the letter will be made a part of the record.

(The letter referred to is as follows:)

STATE OF WEST VIRGINIA,
DEPARTMENT OF LABOR,
Charleston, April 14, 1953.

Hon. SAMUEL K McCONNELL, Jr., M C,
Congressional Office Building, Washington, D. C.

DEAR MR. McCONNELL: At the suggestion of the Honorable David M. Walker, secretary of the Pennsylvania Department of Labor, I am writing you to express my approval of H. R. 4274.

There are many other provisions of the National Labor Relations Act which, in my judgment and in the light of many years of experience in the field of industrial relations, are detrimental to a sound employer-employee relationship. Many of the interpretations and decisions of the Board are conflicting, thus complicating and confusing negotiations between the two parties carried on in the utmost sincerity.

For example, there is no consistency in the interpretation of the term "interstate commerce" on a Federal level and time and time again you have a situation, where the Wage and Hour Division has disclaimed jurisdiction because it was their contention that the concern in question was not engaged in interstate commerce, while the NLRB has claimed full jurisdiction in a labor dispute, because they contended the concern was so engaged.

District 50 of the U. M. W. of A. is quite active in our State, but under the act, they are ineligible and cannot secure the services of the Board. As a result this department has conducted quite a number of elections, at the joint request of the employers and the unions involved. Several years ago, we conducted an election at the joint request of an employer and one of the unions affiliated with district 50 and the union was selected as the bargaining agency by a substantial majority. Several years later the services of the Board were invoked to conduct a decertification election in the identical establishment. It requires quite an elastic mental process to figure out why the Board could not act in the original election, but have authority to act in the election for decertification.

We have conducted quite a number of elections for all affiliates in this State and when they called on us we were curious to know the reason since these unions were eligible to secure the services of the Board. Invariably the answer was that the State could and would conduct an election within 48 hours, if necessary, while it usually took the Board months to render the same service. I submit that if it is practical, economical and expeditious for the State to conduct an election in the one instance, why is this function not delegated to the States.

I would like to digress for a moment, to comment on the Federal Conciliation Service. This service has been brought into disrepute by the reprehensible practice of practically forcing the service on management and labor without request and before management and labor have had an opportunity to work out their own problems. In States that have a State Conciliation Service, management and labor have almost come to the conclusion that this is a competitive service and as a result, both State and Federal Government have suffered a loss of prestige and influence. What is more harmful and insidious is that this scramble to inject government into every minor problem has developed an alarming tendency on the part of both management and labor to lean on government to settle problems that could best be adjusted among themselves.

To the impartial and unbiased observer, it appears that government, both Federal and State, are more responsible for the turbulent relationship between management and labor, so prevalent today, than either one or both of the parties more deeply concerned. We have industries in our State that never had a strike for a period of 60 years until a notice of termination of contract (required

by law) brought a flock of Federal conciliators on the scene disrupting and confusing a relationship that was without strife or strike for over half a century.

We have had employers call this office time and time again alarmed by the receipt of a notice of change of termination of contract (required by law) and the presence of a conciliator on their doorstep, before they had the opportunity to discuss changes in a working agreement with which they were in accord.

The NLRB is fast developing the same tendencies that characterized the War Labor Board Bottlenecks, backlog of cases, procrastination, long-drawn-out procedures, these add nothing to a sound and healthy industrial relationship and ever so often there are situations where the State, whose economy is detrimentally affected, has a solution or could solve the problem, but is powerless to apply it by reason of so-called Federal jurisdiction.

It is about time we evidence a little more confidence in American industry and American labor and permit them to at least try to solve their mutual problems without government breathing down their neck, and it is about time we place greater responsibility on the States to render those services, which they can do far better than the Federal Government.

Very truly yours,

CHAS. SATTLER,
Commissioner, West Virginia Department of Labor.

Mr. GRAHAM. A statement from Walter E. Maloney, president, American Merchant Marine Institute, New York City.

Chairman McCONNELL. Without objection, the statement will be made a part of the record.

(The statement referred to is as follows:)

STATEMENT SUBMITTED BY WALTER E. MALONEY, PRESIDENT, AMERICAN MERCHANT MARINE INSTITUTE, INC., NEW YORK, N. Y.

We submit herewith the views of a large segment of the American merchant marine industry upon various aspects of the legislation to amend the labor law now before your committee.

The American Merchant Marine Institute, Inc., is an association comprised of 73 American-flag steamship companies engaged in both the foreign and domestic trade of the United States. Through the committees for companies and agents, we represent many of our members and numerous other steamship companies in collective bargaining with most of the maritime unions on the Atlantic and Gulf coasts.

Although the complexity of the labor relations problems in the maritime industry is without parallel, many of the issues now before you apply with like effect to all industries. Accordingly, with respect to such issues, it is not necessary to elaborate on the facts already presented to you.

Nevertheless, there are several vital issues, having special significance with respect to our collective bargaining relationship with the various seagoing unions, to which we would like to call your attention. These are.

1. The maritime hiring hall
2. Industrywide bargaining
3. Injunctive relief when required to prevent violations of the act or injury to the public welfare.

In order for you to fully understand our position on these issues, I believe it is necessary to emphasize two important elements which create the unique situation which exists in the shipping industry. First of all, the crew of each vessel is represented by a number of unions. In the case of our own companies, the various segments of the crew of each vessel will be represented by at least 4 separate unions, even though the crew on an average American freighter will number less than 50 men. Some of these unions are CIO, other AFL.

Secondly, the importance of the maritime industry to our domestic and foreign economy and the immediate effect of direct foreign competition tend to exaggerate the consequences of any imbalance in the relationship of labor and management.

The foregoing factors are of importance in any consideration of fundamental changes in the existing law. We cannot put too much stress on the fact that no amendment should be made without specific attention to its effect upon the maritime industry.

THE MARITIME HIRING HALL

It has been proposed that the union hiring hall be legalized as a closed shop. The companies which we represent are strongly opposed to any amendment of the existing law on closed shops by providing special treatment for the maritime hiring halls. We have no objection to the hiring hall in itself, but we object strenuously to any change which would permit the hiring hall to be the exclusive source of personnel and at the same time give preference in employment to union members. Any such change would serve to continue all the evils of the closed-shop system.

The present collective-bargaining agreements between our steamship operators and the various unions contain hiring provisions whereby the employer agrees to obtain personnel through the employment offices of the union, and the union agrees to maintain, administer, and operate its offices in accordance with the existing law. Under this procedure there is a referral of job opportunities to the union hall without discrimination against nonmembers of the union. There is a preference given on the basis of previous employment with the respective companies and the companies have a right of rejection of unsatisfactory applicants. This procedure is not entirely satisfactory to the steamship companies. There is considerable rotary hiring and in many cases the companies are necessarily forced to employ seamen who do not come up to the caliber of the men they would like to have serving on their ships.

Nevertheless, the steamship companies are able to operate under this procedure and we are making no request to alter it. On the other hand, we do not believe that there is any reasonable basis to require a change in the law to establish a closed-shop hiring-hall system. There is no evidence whatsoever to support the statements made by union representatives that the act "has operated to destroy the union hiring hall" and that "without preferential employment union security cannot exist." The percentage of personnel obtained through the union halls on a nondiscriminatory basis equals or exceeds the percentage of personnel which passed through the hiring halls when they were restricted solely to union members. It is certainly a well-known fact that the strength of the maritime unions has not decreased in any way since the enactment of the existing law. During recent years the maritime unions have made gains in wages and working conditions far exceeding gains made by unions in other industries in the comparable period.

The proposals to make the union hiring hall a part of a closed-shop system would give the unions a virtual monopoly of employment on American ships, would aggravate the tendency of the rotary system to continue subpar workers in employment, and would reduce to a minimum management's ability to exercise discretion in selecting capable and responsible employees to operate American ships.

INDUSTRYWIDE BARGAINING

There are before your committee proposals to prohibit collective bargaining on an industrywide basis. Although our American shipping companies do not oppose such an amendment to the law as it applies to other industries, we respectfully submit that such a change in the law should not be applied to the maritime industry. At the present time collective bargaining in the maritime industry is not industrywide in the true sense of the word but is predominantly "multiemployer." For example, there are separate bargaining groups based on regions, as witness bargaining on the Atlantic and gulf coasts and entirely separate bargaining on the Pacific coast. The bargaining process is also broken down on the basis of the class of ship involved. Thus, there is separate bargaining in the case of the dry-cargo and passenger vessels, tanker vessels, and the collier vessels. There is also a division of bargaining based on crafts and there are separate bargaining arrangements in the cases of the licensed deck officers, licensed engineers, radio officers, unlicensed personnel, and, also, several smaller units.

The inability of the companies to bargain on an industrywide basis or on a multiemployer basis would make it impossible to protect individual employers from coercive pressure by the various unions. It would aggravate the existing "whipsawing" tactics of the union, which, even now, have placed the industry in a precarious position. This prohibition would also destroy the group pension and welfare and vacation programs in the industry which are now jointly administered by employer and union trustees, and which could not be carried on effectively where bargaining was limited to one company.

We therefore recommend most strongly that in the event Congress enacts any laws limiting industrywide bargaining, proper exemptions be made in the case of the maritime industry.

INJUNCTIVE RELIEF WHEN REQUIRED TO PREVENT VIOLATIONS OF THE ACT OR INJURY TO
THE PUBLIC WELFARE

Various proposals have been made to your committee to restrict, delay, and otherwise weaken the power of the Federal Government to secure injunctions to prevent unfair labor practices, to enforce orders of the National Labor Relations Board with respect to the prevention of secondary boycotts, and to prevent strikes which would imperil the national health and safety. Such proposals, of course, would affect all industry but it is our opinion that any relaxation of the law would be extremely dangerous in the case of the maritime industry. You are, of course, aware of the serious results to the economy of the entire country during several of the prolonged maritime strikes. A relaxation of the existing controls would, we believe, encourage violations of the act and aggravate the situation when strikes are in effect.

We earnestly recommend that not only should there be no relaxation from the present law but that consideration should be given to the imposition of stronger and more effective powers in the Government when the national welfare, or the welfare of a large section of the country, is jeopardized by union action.

Mr. GRAHAM. A statement from Arthur J. Packard, president, American Hotel Association, New York City.

Chairman McCONNELL. Without objection, the statement will be made a part of the record.

(The statement referred to is as follows:)

STATEMENT SUBMITTED BY ARTHUR J. PACKARD, PRESIDENT, AMERICAN HOTEL
ASSOCIATION, NEW YORK, 19, N. Y.

I am Arthur J. Packard, president of the Packard Hotel Co., with headquarters in Mount Vernon, Ohio. I own and operate a chain of small hotels in the State of Ohio. I appreciate the opportunity to file this brief statement with you in connection with your current study dealing with the Labor Management Relations Act of 1947. I am also addressing you as president of the American Hotel Association, and as a member of its Governmental Affairs Committee.

Although hotels are frequently referred to as the Nation's seventh largest industry, we are by and large a collection of small business establishments. The 1948 Census of Business reports that there are some 29,650 hotels in the United States, of which 88 percent contain less than 100 rooms. A hotel basically sells rooms and food, a service which is delivered or performed entirely on the premises and never crosses State lines. Thus, it is clear that our business is essentially local in character and has little, if any, effect upon interstate commerce.

During the 13 years of operation under the Wagner Act, the National Labor Relations Board never took jurisdiction over a hotel. The Taft-Hartley law did not change the Wagner Act language as to jurisdiction nor did it alter definitions of interstate commerce. Since the Taft-Hartley law was enacted, there have been only two hotel cases which were passed upon by the NLRB. One case involved the Hotel Greenbrier in West Virginia and the other involved several St. Louis hotels and their local hotel association. This latter case was argued before the Board in Washington on November 9, 1950. In both of these cases the Board declined to take jurisdiction. In the St. Louis case the Board specifically pointed out that it would not effectuate the purposes of the act to assume jurisdiction over a controversy involving a hotel. In the St. Louis case, the employers and unions representing a large majority of hotel employees in the hotels both urged the Board to adhere to past precedents by declining to exercise jurisdiction. The Board said: "We think their joint contention is entitled to great weight." We call this comment of the Board to your attention here because of your consideration of the bill, S. 1785, recently introduced by Senator Smith of New Jersey.

The Smith bill as presently drafted would completely revolutionize our industry's labor relations, and place the average hotel operator in a very difficult position to determine whether he was subject to the Federal or a State labor statute.

Before commenting upon the provisions of S. 1785, we would like to make our

position crystal clear. We feel that the hotel industry's employer-employee relations can be more effectively regulated at the State and local level, and that there is no need for turning to the Federal Government for assistance in this regard. Moreover, there has been no single case where State labor boards have been unable to exercise effective control over hotels, dating back as far as 1935. As an example, the State Labor Relations Board in Connecticut, in processing a case between a Hartford hotel and a labor union, stated:

"In view of the predominantly and essentially local character to respondent's business, we do not believe that there is such a close and substantial relationship to interstate commerce as to justify Federal intervention. We do not believe a labor dispute involving this respondent and its employee would result in a substantial interruption to or interference with the free flow of interstate commerce. We find, therefore, that respondent is not subject to the National Labor Relations Act."

We now turn to the language of subdivision (c) as it appears on page 3 of S 1785. This would remove from the Board any discretion in deciding whether to assume jurisdiction in any labor controversy involving an unfair labor practice affecting commerce. This suggested amendment to the law might well cause the Board to decide it would have to take jurisdiction even though such action conceivably would be utterly inconsistent with the fundamental purposes of the law. Therefore, we respectfully suggest that Congress should continue the Board's discretionary powers as they presently exist in jurisdictional matters. If Congress decides that the discretionary powers of the Board must be abolished, each employer must start anew to determine whether or not he is subject to the act regardless of past practice or past decisions.

From the viewpoint of hotels we are primarily concerned with the language of subdivision (B) in the proviso on page 2 of Senator Smith's bill, which relates to furnishing goods and services of more than \$50,000 a year directly to persons engaged in commerce. Many hotels in large as well as small cities do a banquet business and render bills to corporations which may or may not be engaged in commerce, and even to individuals who are in business for themselves and may or may not be engaged in commerce. We feel that this provision is impractical, in that a hotel would have an exceedingly difficult time in ever knowing whether or not a customer (a corporation or an individual) was engaged in commerce. A hotel would have to classify every customer it had to decide at its peril whether or not the customer was or was not engaged in interstate commerce. Such a classification would have to be made daily and bills rendered to such customers segregated so that the hotel could ascertain whether or not the bills rendered to those engaged in interstate commerce totaled more than \$50,000 in a single year. It is even possible that under such a system a hotel would be subject to the act one year and not subject to the act in the following year. In other words, this subdivision (B) would present a very difficult problem of interpretation for almost every hotel throughout the country, and hotels could never be certain as to whether or not their employer-employee relations would be governed by the Federal labor laws, which might provide or even require one course of action, or whether they would be governed by a State labor statute which might require another course of action. We could go on *ad infinitum*, but the point is clear that uncertainty and doubt would accompany every major decision of a hotel operator in its dealings with its employees if S 1785 were to become a part of our Federal labor law. Therefore, if your committee, in its wisdom, feels that subdivision (B) should be retained in this proposed amendment, we respectfully urge that the definition of "employer" as defined in this bill be amended so as to exempt hotels along with those other industries which this legislation would remove from the scope and jurisdiction of the Taft-Hartley Act.

Our appeal to you today for a clear-cut statutory exemption is not a new and untried theory. This approach has been proved successful under the Fair Labor Standards Act. Our appeal is simply a means of resolving any uncertainty that may exist due to the absence of any clear-cut statutory exemption in the current law. In addition, Congress has clearly indicated in times past that hotels should not be regulated in their labor problems on the Federal level. For instance, the House Committee on Expenditures in the Executive Departments (H. Rept. No. 2050, May 26, 1948), after discussing the possible application of the act to hotels and other small establishments, states:

"Your subcommittee is certain that it was not the intent of Congress to include in the jurisdiction of the NLRB every small, local business which drew a small portion of its supplies or merchandise from beyond the borders of a State or Territory. The members of the subcommittee are of the opinion that

any attempt on the part of either the General Counsel of the NLRB, or the Board itself, to enlarge upon its own jurisdiction by interpretation, is not in keeping with the will or the intent of Congress."

Finally, pinpointing the issue to our industry, Senator Taft said, on the floor of the Senate August 30, 1949:

"I do not believe that the act was ever intended to cover any part of the hotel industry, as we know it, whether we are considering resort hotels or the more commercial hotel found in both cities and small towns. At least, I am sure that such was never my intention."

It has been interesting to note the comments of some of the critics of the Smith bill, and the arguments they have advanced against it. They emphasize that there are only a limited number of States which possess statutory bodies in the labor regulatory field. We cannot emphasize too strongly that there are 44 State legislatures sitting this year, and if there is a need for the passage of State labor-management relations statutes not heretofore enacted, who should know better than those 44 legislatures how best to provide for the needs of their own citizens.

If Federal jurisdiction were restricted, it would follow that activities of State regulatory boards would automatically be enhanced. For industries such as hotels, this would insure maximum attention to factors and circumstances peculiar to each community. As an example, there are wide fluctuations in the labor market, and in personnel practices between such cities as Philadelphia and Pittsburgh, and between San Francisco and Los Angeles, and in many other cities. Full weight can be given these local factors when a State board adjudicates an employer-employee relations case, a situation which could not be possible under Federal control.

To sum up, we respectfully submit that subdivision (c) on page 3 of the bill removing discretionary powers of the Board should be eliminated from the bill. Second, we urge that if this subdivision is retained in the bill and the Board compelled to take jurisdiction regardless of past practice and the particular localized character of this service industry, the definition of "employer" should be amended so as to specifically exclude hotels.

Chairman McCONNELL. Without further ado, then, the hearings will end.

(Whereupon, at 6:43 p. m., the hearings were recessed, subject to the call of the chairman.)

APPENDIX

Pursuant to the direction of the chairman of the Committee on Education and Labor, the Honorable Samuel K. McConnell, Jr., the following statements, memorandums, and letters received by the committee are made a part of the printed record:

SUPPLEMENTAL STATEMENT OF JAMES B. CAREY, PRESIDENT, INTERNATIONAL UNION OF ELECTRICAL, RADIO, AND MACHINE WORKERS, CIO

On April 15, 1953, I had the privilege of appearing before your committee to discuss some proposed amendments to the Taft-Hartley Act. In the course of answering questions directed to me by members of the committee, I pointed out that certain employers, and particularly the General Electric Co., found it profitable to deal with Communist-dominated unions representing their employees. I pointed out that General Electric considered it highly useful for its own selfish interests, to have the Communist-dominated United Electrical, Radio, and Machine Workers of America, to play off against a vigorous anti-Communist union such as the International Union of Electrical, Radio, and Machine Workers, CIO. The company purported to find no difference between these two organizations. My testimony contained no personal attacks. It was a brief but careful analysis based on my observations of the company during the past 3½ years of dealing with them.

On May 6, 1953, Mr. L. R. Boulware, a vice president of General Electric, accompanied by Mr. W. J. Barron, its labor-relations counsel, appeared before you purportedly to give testimony on proposed amendments to the Taft-Hartley Act. However, using as their excuse the problem of how to deal with communism in American labor unions they devoted the major part of their oral statement to a personal attack on me. In a statement notable only for scurrilous and unrestrained vituperation, they assailed my motives, my credibility, and my integrity. If I were inclined to debase the facilities of this committee as they did, I could easily answer in kind. It would be a simple matter to demonstrate that they have torn various statements of mine out of context and arranged them to suit their malignant purposes and to satisfy their vindictiveness.

But such a course would serve no purposes in which this committee is interested. However, this committee is, I think, interested in receiving some further documentation demonstrating how so powerful a corporation as General Electric Co. has used its vast resources against the public welfare by confusing its more than 200,000 employees on the matter of communism in labor unions.

The vehemence and virulence of General Electric's attack on me can be explained rationally only on the basis that the company realizes that the public is becoming aware of what a dangerous game the company is playing. Boulware realizes that the vast propaganda machine he has established in recent years is being revealed in all its antilabor and antipublic objectives.

It should be of interest to this committee to know what GE's pretensions are, and then to consider how they have been applied to the problem of communism in labor unions.

A new dispensation dawned in General Electric about 1947 and Mr. Lemuel Ricketts Boulware became its prophet. This new dawning is described by Mr. Boulware in a chapter of a book entitled "Development of Executive Leadership" in which he describes "the business leader's larger job." This article was written, apparently, in 1949. He poses the question why business leaders are not given more respect by the public. He then goes on to say:

"At General Electric, where we have all these questions, we decided 2 years ago that we, at least, would try to do something about this businessman's paradox. We concluded that we must come to grips with these puzzling problems.

We determined not to go on about our customary pursuits, being technically successful there, while appearing to be failing in the larger and *the only really important sphere of true personal accomplishment and real social usefulness.* We, like too many others, were winning the skirmishes as before, but these successes seemed to be having less and less influence on winning important battles, much less the war * * * [Italics added.]

He states further:

"I can't speak for others. But I can tell you it is my conviction, and the conviction of member after member of our General Electric management force of 15,000, not to look to others or to try to delegate this job of good citizenship to subordinates or to associations. We are going to try to do our part of this job ourselves—each of us to the degree we can attain the personal facility and command the interest of others in the thing we are trying to do in the public interest. *For we have become acutely aware that the public interest is now the individual selfish interest of each of us.* And it isn't just enlightened self-interest. It's self-preservation, the first law of nature * * * " [Italics added.]

Mr. Boulware has thus set up for General Electric these standards of real social usefulness and public interest. He should not complain if we proceed now to judge him and General Electric by those standards, particularly in respect to their handling of the problem of communism in labor unions and among their own employees.

UE IS A COMMUNIST-DOMINATED ORGANIZATION

In 1948 about 100,000 employees of General Electric Co. were represented by UE. For some years prior to that date, a large segment of the membership of UE had become certain that the leadership of the organization was following the Communist line. Persistent efforts were being made to displace that leadership, and I took an active part in this struggle to do so. The General Electric Co. was, of course, fully aware of the struggle and of the ideological issues involved. Further, the company could not possibly have been unaware of the growing public clamor on the matter. A number of congressional investigations into Communist-domination of UE had already been made by 1948. During that year a subcommittee of the Committee on Education and Labor of the House of Representatives made the most comprehensive study of UE that had been made up to that time and issued a thoughtful report. That report stated in part as follows:

"The Communist Party has gained a strong foothold in one of the Nation's most strategic industries: The electrical industry. It dominates the largest labor union in that industry: The United Electrical, Radio and Machine Workers of America. It has seized control of its national office, the executive board, the paid staff, the union newspapers, and a number of its district councils and locals

"The hold of the Communists on America's electrical industry is the hold of Soviet Russia. It is communism in action—now. It is not a historical danger; it is a present danger * * *

"The overwhelming evidence at the hearings was that the following international officers of the UE were, at the times stated therein, either members of the Communist Party or under its control: James J. Matles, national organizer; Julius Emspak, secretary and treasurer; and Russ Nixon, Washington legislative representative. It further showed that the international president, Albert Fitzgerald, collaborated with the other international officers in maintaining the substantial control of the Communist Party over the policy of the union. The evidence also showed that a considerable number of official positions are occupied by members of the Communist Party in the locals of the UE-CIO throughout the country."

After the testimony given to that committee had appeared on the front pages of the Nation's newspapers, and after the UE convention in 1948 had shown that the struggle to eliminate the Communist leadership had reached a new pitch of intensity, the company published a full-page advertisement in a number of newspapers on September 29, 1948, entitled "A Plague on Both Your Houses." Mr. Boulware has boasted to your committee that he wrote every word of this advertisement. The following are several excerpts from his "deathless prose," in regard to the struggle between the Communist and anti-Communist union elements:

"* * * We disapprove of them both, and our disapproval is equal in the case of each.

"This disapproval is not personal. It is not based on anything either has done, or could do, just to General Electric. Our disapproval is based on what they

stand for—what we think their ideas could do to America—if enough people ever embraced those ideas.

"While frequently the leader and his associates on one side are termed 'left wingers' and the leader and his associates on the other are wrongly—in our opinion—regarded as 'right wingers,' we believe they have in the end the same objectives. We believe that what each side advocates would result, in the long run, in substantially the same thing for our employees, our company, and our country.

"In our opinion, whether they realize it or not, both are collectivists—believers in government being big and in people being little. * * *

"We honestly believe that the top leaders on both sides in UE are consciously or subconsciously working in a direction opposite to our better understanding of our free system and to our better use of that system. *We do not think being termed an 'anti-Communist,' in the case of one, or a 'door-opener for the Communist Party,' in the case of the other, makes any difference.* * * * [Italics added]

Anyone who asserts that there is no difference between Communist and anti-Communist labor union leaders must be either ignorant or malicious. Mr. Boulware is not ignorant. Nine days after "A Plague on Both Your Houses" appeared General Electric circulated another article signed by Mr. Boulware titled "Why Joe Wants Your Union." The article quoted a number of statements from Stalin, Lenin, Marx, and the program of the Communist International showing why it was important for Communists to capture the trade unions. The article closed with the statement "It is clear that you—and all of us—must be more than ever alert to this newly significant danger which communism has brought to our unions as it has to our whole national safety."

It is obvious that Mr. Boulware was aware of the existence of communism in labor unions. Consequently, the deliberate equating of Communists with anti-Communists requires the conclusion that GE's plan of action at that time was so to confuse its employees that they would lack the will to give vigorous support to any labor union.

APPEARANCE OF IUE-CIO

The next significant event in this history occurred when UE was expelled from the CIO on November 2, 1949, on the ground that it was "the Communist Party masquerading as a trade union." On the same day, the International Union of Electrical, Radio and Machine Workers was chartered by the CIO, to take the place of UE in the electrical industry. On November 3, the following telegram was sent to General Electric Co., as well as to other employers then dealing with UE:

"On November 2, 1949, the Congress of Industrial Organizations at its 11th Constitutional Convention held in the city of Cleveland, Ohio, expelled and dis-affiliated the organization formerly known as the United Electrical, Radio and Machine Workers of America. The convention thereupon issued a charter of affiliation to the International Union of Electrical, Radio and Machine Workers (CIO) which thereby acquired jurisdiction over the field until then reserved to the former CIO affiliate United Electrical, Radio and Machine Workers of America. Your employees continue to be members of the CIO and are represented only by its affiliate, the International Union of Electrical, Radio and Machine Workers (CIO)

"The further effect of these actions by the Congress of Industrial Organizations is to constitute the International Union of Electrical, Radio and Machine Workers (CIO) in place and stead of the former CIO affiliate United Electrical, Radio and Machine Workers of America under any collective-bargaining agreements which may now be in existence

"The preponderant majority of your employees in the bargaining unit or units heretofore represented by the United Electrical, Radio and Machine Workers of America have decided to remain with the CIO in the International Union of Electrical, Radio and Machine Workers (CIO).

"The International Union of Electrical, Radio and Machine Workers (CIO) for itself and on behalf of your employees now covered by collective-bargaining agreements with the former CIO affiliate United Electrical, Radio and Machine Workers of America, therefore hereby demands to be recognized as the exclusive bargaining representative for all such employees.

"It is incumbent upon your company not to recognize the former affiliate United Electrical, Radio and Machine Workers of America in any respect or to accord it or its agents any rights or status as bargaining representative.

"JAMES B. CAREY,

"Chairman, Administrative Committee,

"International Union of Electrical, Radio and Machine Workers (CIO)."

Mr. Boulware replied a few days later, declaring that GE was "strictly neutral" and that the company was required to deal with the UE until otherwise directed by the National Labor Relations Board. Although the unions in most of the GE plants represented by UE had disaffiliated from that organization and joined the IUE-CIO, Mr. Boulware declared that "it was difficult to understand the basis for Mr. Carey's claim that IUE-CIO is entitled to the contract rights held by the UE."

However, Mr. Boulware apparently found his position becoming untenable, or his understanding of the problem becoming clearer, for on or about December 15, 1949, the General Electric Co. filed representation petitions with the National Labor Relations Board to determine the bargaining representatives for the employees in its various plants.

It might reasonably have been assumed that, having filed these petitions and having volubly declared its neutrality, GE would, at least, have maintained that position. However, in the succeeding months the company made it clear at a number of its plants that it preferred to have the UE continue as the bargaining agent. A detailed description of how this was accomplished was presented by me in my testimony before the subcommittee of the Committee on Labor and Public Welfare of the Senate in 1952 in the investigation made by that subcommittee on Communist domination of unions and national security. I will, therefore, not burden your committee's records with a repetition of that testimony, but respectfully call it to your attention for your consideration.

GE has, of course, vehemently denied that it has ever acted in a discriminatory fashion. Although the IUE-CIO did file a number of unfair labor practice charges with the NLRB during that period, we felt obliged to withdraw those charges because we were more interested in collective bargaining than in litigation, and we felt that those we represented should receive the benefits of a contract rather than wait the many weary months required before an NLRB decision can be made and enforced.

GE EMPLOYEE RELATIONS NEWS LETTER

There is another course of conduct, however, which GE cannot explain away. Although it has not published full-page ads of the "Plague on Both Your Houses" type since the IUE-CIO was established, it has for several years issued, more or less regularly on a weekly basis, a publication known as the Employee Relations News Letter, which is intended for circulation among General Electric management. This letter is issued by the department over which Mr. Boulware presides, and since it is intended for GE supervision it undoubtedly reveals what may charitably be called the thought processes of Mr. Boulware. These letters discuss various matters, chiefly developments in the labor field which Mr. Boulware considers of interest to management, and his notions about economics and the public welfare. What is important here is that these letters frequently attack me or the IUE-CIO vigorously and sometimes viciously. However, on the few occasions when criticism of the UE has been voiced, it has generally been couched in terms of "soft impeachment." In order to get the full flavor of these letters it is necessary to read a considerable number of them. They constitute a remarkable revelation of sneering arrogance, of a blithe assumption that what is good for General Electric is good for the country, and of condescension if not contempt for anyone who thinks that anybody but GE knows what is good and right for GE employees.

Considerations of space require me to limit examples from these letters concerning the treatment of IUE-CIO and UE. Thus, in the letter of February 12, 1951, it is stated:

"Union officials—sometimes belligerently and sometimes pleasantly—are now offering their assistance to Government officials and business management in expediting civilian and military production in the emergency. Is it any wonder there is such an inclination at national and local levels to feel that these gentlemen have made such a successful lifelong career of specializing in effective ways to interfere with production that they may not now be very useful if they should suddenly be put at the gentle art of increasing production?"

This is almost an open attack on the patriotism of union leaders participating in the defense effort, of whom I was one. It was known, of course, that UE had no such representatives. This attack is continued in the letter of February 19, but the only reference to UE is that Newsweek "reports that the Communist present strategy is 'to exploit labor's dissatisfaction to the wage freeze, the production speedup, and alleged discriminatory hiring practices'." The letter carefully refrains however, from stating whether this refers to any organization among the General Electric employees.

This attack is carried forward in the letter of February 23, where American labor is accused of trying to "exercise naked force." It goes on to say, "It seems too bad that so many union officials seem bent on exercising group power as the master of employees, employers, and the public."

But that same letter reports that UE has called a strike at an unnamed GE plant and merely asks whether the strike was promoted "as a real pay drive, or whether it is an organizational drive, or it is just stirring up trouble for trouble's sake, we don't know." Thus, non-Communist labor is accused of a naked drive for power and the use of brute force. No such language is used in describing the UE strike.

The letter of March 26, 1951, was written during a period when the contracts of IUE-CIO and UE were being negotiated for wage adjustments. The IUE-CIO had indicated that it would accept a cost-of-living adjustment amounting to 9 cents an hour. The UE was demanding a 32 cents an hour increase. GE says of the UE demand merely that it is "unrealistic." But it has the following to say of non-Communist labor leaders in Washington:

"The current drive for power by certain socialist-minded union bosses and others now prominently vocal in Washington can have a big bearing on whether free speech, a free press, free persons, and free enterprise are to continue here as in the past—or whether editors and businessmen are going to be hunted down by the police for being Democrats or Republicans or just businessmen and editors reporting the facts and speaking the truth as they see it."

This irrational outburst is obviously a continuation of the theme of "a plague on both your houses."

Note how the question of strikes is handled. The letter of April 13, 1951, reports that a UE strike lasting almost 5 months, in the Oakland, Calif., plant of GE was settled, and that "the employees and their union will cooperate wholeheartedly with management in a sincere effort to make the Oakland management successful." The letter of October 26, 1951, discusses UE strike threats. It points out that strikes are unpopular and concludes that GE doesn't understand why UE would be considering a strike. In both letters the discussion was calm, dispassionate, and even friendly. However, in the letter of October 31, there is a discussion of strikes that other unions are threatening or carrying out, as well as some stoppages in GE, and the letter states, "It is a poor commentary on the morals and patriotism of the leaders." In the previous letters nothing was said about the morals or patriotism of the UE leaders.

The "plague on both your houses" theme gets a resounding play in the letter of February 29, 1952. GE workers had been waiting for many months for approval by the Wage Stabilization Board of the wage increase negotiated the previous fall. There was widespread unrest in the plants. It was felt that there was some obstruction in the Wage Stabilization Board. The IUE-CIO scheduled protest meetings for March 4, 1952. Subsequently, the UE decided to do the same. The letter of February 29 starts out, under the heading "Crises Technique," with the statement, "The dyed-in-the-wool revolutionary doesn't need an issue of any substance. He will try to make something out of nothing through the old tried and true 'crises technique.' If he succeeds in whipping up even temporarily the appearance of a crisis, there is always some destruction or loss—and a bill to pay."

Thus, the IUE-CIO is branded as revolutionary and put into the same class as UE. There was no such hysterical language in describing the strike threats of UE during the previous fall.

The first real reference to the question of dealing with communism in unions appears in the letter of March 21, 1952, more than 2½ years after IUE-CIO first raised the question with GE. The letter reveals "We have long been insistent that Government—not the employer, union, or other private entity—is the only competent agency for objectively or authoritatively identifying, exposing, or moving, or rendering ineffectual any Communist leaders or allied enemy agents found in labor unions." This statement, of course, was prompted by the hearings being held by the Senate subcommittee of the Committee on Labor

and Public Welfare conducted by Senator Humphrey. The letter then points out that GE has submitted its proposals to Senator Humphrey. Our own diligent reading of these letters for the previous 2½ years has failed to reveal a single reference to this alleged "insistence" of the company on any kind of method for "identifying, exposing, removing, and rendering ineffectual any Communist leaders" in labor unions. In view of the prodding by the Senate committee, this sudden acquisition of piety is something less than convincing.

The letter of May 16, 1952, returns explicitly to the "plague on both your houses" theme. In a reference to a threatened strike of the International Association of Machinists, AFL, and the United Automobile Workers, CIO, the letter states:

"Whether it is their intention or not, the effect of their efforts gives undeniable aid and comfort to the enemy. This, of course, is what the public has been led to expect of unions labeled as Communist dominated. But take a look at those union officials who have most loudly and widely commercialized their professed anticommunism. Their eagerness to threaten or call a strike which the Government says can't be permitted—and over demands on which union officials haven't been able to obtain agreement heretofore in normal peacetime bargaining—is just as much help to Joe as if these union officials were, in fact, Communist agents."

This outburst was occasioned by the fact that these two unions were asking, among other things, for a union shop. The New York Herald Tribune, on May 20, reported this criticism in a column headlined "Anti-Red Unions Aid Stalin, GE Asserts."

In the letter of January 23, 1953, there appears for the first time in these letters some reference to the accusations against the UE leadership. The letter conveniently fails to state, of course, that a few days earlier the Senate Subcommittee on Education and Public Welfare had issued a report containing a blistering attack on GE for its "plague on both your houses" philosophy. This letter points out, with notable lack of force, that "We have been pointing out that UE must itself come forward and show more effective ability and willingness to clear itself of these repetitive charges, or else it will fall before employee and public opinion just as surely, although perhaps not so promptly, as by Government edict." But what are the charges? The letter sayeth not. It states merely, "Before Congress, on television and radio, and in other employee and paid public communications we have long urged that the United States Government either clear UE of the mountain of accumulated charges or stop certifying it to us as a union with which we must deal in good faith as the representative of our employees." Such gentility is really touching.

Your committee should be interested in this comment for another reason. GE came before you, in the persons of Mr. Boulware and Mr. Barron, and insisted that the problem of Communist leadership in American labor unions could be handled effectively only by legislation of a drastic nature which would seriously imperil non-Communist unions. The foregoing comment indicates that GE thought otherwise a few short months ago.

In contrast to the mild reproof to UE in the letter of January 23, GE returns to the "plague on both your houses" theme in the letter of March 16, 1953. The issue there was a strike conducted by IAM and UAW at the GE plant in Evandale, Ohio. The letter states:

"Incidentally—even though this strike may have been started on the false premise of having the country freshly by the throat—you can just imagine the din that would have been raised by certain loudly vocal anti-Communist union officials *if this strike had been suddenly called at such an apparently advantageous moment by a union suspected of Russian connections or leanings.*" [Emphasis in original.]

The record is clear that GE would raise no din in such a case.

The foregoing analysis of the Employees Relations News Letter is by no means exhaustive. However, I believe it is sufficient to indicate the nature of some of the thinking and the propaganda issued by GE. It should be noted, particularly, that despite the many statements concerning the danger or the effect of communism among union leaders, not once did the GE News Letter, or any other GE publication throughout this entire period, indicate that GE though the leadership of the UE was even tainted with Communist ideology.

INVESTIGATION BY SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

The attitude of the General Electric Co. on this question was examined by the Subcommittee on Labor and Labor-Management Relations of the Committee on Labor and Public Welfare of the United States Senate, during 1952. The subcommittee investigated the public-policy implications of Communist domination of certain labor unions. The investigation was extensive, and included the collection of a substantial amount of source material, the circulation of a questionnaire to a group of representative spokesmen from the ranks of labor, management, Government, and the general public concerning suggested approaches to dealing with the problem, as well as hearings at which the committee probed further into the issues raised by the replies to the questionnaires. The subcommittee received a substantial amount of original material confirming the widely held opinion that UE is and has been a Communist-dominated organization, and that its history reveals, in the words of the subcommittee's report, "a tenacious conformity to the Communist Party line."

One of the matters considered by the subcommittee was the attitude of General Electric Co. to this question, and particularly its propaganda line of a "plague on both your houses." The committee report comments on this attitude, in part, as follows:

"This is an amazing statement and shows little comprehension of the forces at work in this world, in the year 1952. It is this attitude on the part of some employers which has made the opposition to the real Communists in the unions very difficult and explains in large part why the Communists have been able to retain as much as they have. If an employer says, in effect, there is no difference between a Communist union and an anti-Communist union, it is understandable why many workers may not pay too much attention to a valid charge that a union is Communist-controlled.

"We need to recall Professor Seidman's critical differentiation between Communist unionism and other liberal or radical groups in the American labor movement.

"From the point of view of the other liberal or radical groups, a union is a primary institution that the group seeks to build and make strong, with the objective of winning benefits for the members and for workers in general.

"The policy of such unions is determined by an analysis of the needs of the workers who are employed in the industries in which those unions operate. Such other liberal or radical groups may be critical of employers, of the existing economic system, of Government policy; they may in a particular case be opposed to a war in which this Government is engaged, or even opposed to all wars; and yet I would sharply distinguish between such groups and the Communist Party on the ground that the Communist Party seeks control of unions not primarily to benefit the workers involved, but primarily because the unions then can be manipulated to further a party line which is in turn determined with reference to the interests of the U. S. S. R.' (hearings, p 148).

"Not to make this distinction, as apparently General Electric and other employers have not, is to play the Communist theme song, that an attack on Communists is an attack on all liberal ideas. We deny that it is impossible to distinguish between Communists and genuine supporters of liberal or unorthodox ideas. The Communists are spokesmen for a conspiratorial system of power deriving its prime motivation from the needs of the U. S. S. R. * * *."

Here we see one measured judgment from a responsible source on one of the results of that policy which Mr. Boulware so bravely proclaimed 4 years ago, that policy of promoting real social usefulness, that policy of promoting the public welfare. It has been revealed as a policy more selfish than ever, and more dangerous to the public welfare because it has been until now so artfully concealed. More dangerous than ever because GE, this vast and growing industrial colossus, must inevitably have a profound influence on the leaders of a large segment of our economy.

PRESENT ATTITUDE OF GENERAL ELECTRIC

As a result of the public exposure by the foregoing report, GE has been forced to modify its position to some extent. Mr. Boulware stated to this committee on May 6, 1953, that, "We, of course, share the widely held presumption and belief of UE's Communist domination." That was the first time, to our knowledge, that GE has publicly expressed its position on this issue. There can be little doubt that GE's hand was forced by the public investigations which have been repeatedly made. Of course, in order to cover itself and divert attention

from its own duplicity in this matter, GE engaged in a contemptible and malicious personal attack on me which had no relevance to the issue.

It is scarcely necessary to cite more than one item from the testimony which Boulware and Barron gave this committee to show the frenzy of hysteria and irresponsibility in which that statement was prepared. Mr. Boulware said to you in his testimony on May 6 that "it is particularly significant that only CIO officers have made this charge of employer collusion with Communists, while no such charge has come from the AFL officials you have heard." Not to be outdone, Mr. Barron said to you on the same day, "I think that we specifically stated that one of the reasons why these present charges being leveled by the CIO officers were so obviously brazen alibis was the fact that AFL officers were not leveling those."

However, on March 3, 1953, more than 2 months prior to the date when Boulware and Barron testified before you, and in plenty of time for the vast research and publicity organization of General Electric Co to have discovered it, Mr. Meany, president of the American Federation of Labor, made a vigorous attack on General Electric's plague-on-both-your-houses policy. This statement was made before your committee, in the course of the same hearings which brought Mr. Boulware before you. In response to a question by Mr. Kersten, a member of this committee, as to what Mr. Meany thought of the GE policy, Mr. Meany replied:

"Now, you ask, what about the company, what about the employer? Well, I will give you my private opinion, that the employer in this case, my friend, Charles Wilson, of General Electric, I do not think he is playing the game with his country when he continues to do business with that union and does not use his influence to help the non-Communist union. When you are fighting communism, I do not think you have got to be so ethical and so tolerant of communism as to let them run away with a plant and use their methods. I think that the real American will help the non-Communist union, against the Communist union, because the way these people fight, you know, when they fight to get control of a government or a country, they avail themselves of every democratic process that is contained in the constitution of the government of the country they want to get control of. But when they get control, that is the end of the democratic processes. They can lose all battles but the last one, and when they win the last one that is the end of all battles, and I cite Czechoslovakia as an example.

"So I do not think any big industry should sit back and say 'Well, it is a good idea to have 2 unions competing, it is a good idea to play 1 union against the other.' It may be a good idea, but not when one union is a Communist union.

"Then something else should enter into it, and that is the welfare of the United States of America. And I hold no brief for Charley Wilson in continuing to lean over backward to do business with a Communist union."

Mr. Charles E. Wilson, until recently president of GE, who sponsored this policy, has been succeeded by Mr. Ralph Cordiner, who has continued the same policy.

Perhaps, according to GE's perverted standards, Mr. Meany is not a top AFL officer and, therefore, GE can go on to blithely saying that no such officer has criticized them.

Let it not be said that GE or Mr. Boulware are repentant of their conduct, because responsible observers think their policy is utterly wrong. After having spent probably millions of dollars on a propaganda line to convince its employees that whatever GE does is right, they obviously would not publicly admit their error. That is why, for lack of a better defense, they have descended to vicious mudslinging. That is probably why, when Congressman Powell asked Mr. Boulware whether or not they would issue "A plague on both your houses" today, Mr. Boulware stubbornly replied "we would."

I will leave it to the members of your committee, and to all other responsible people of good will who are concerned with this matter, to determine whether this policy of General Electric Co is a result of a lack of intelligence and understanding, or whether it flows from a reckless determination to do what is necessary to keep alive a Communist-dominated union which has little concern for the real interests of workers, in order to hamstring and render impotent a vigorous anti-Communist union, the International Union of Electrical, Radio and Machine Workers—CIO, which carries on the militant tradition of American trade unionism. In the promotion of its own narrow immediate interests, General Electric Co has disregarded the public interest in preserving the Nation's security and democracy.

NATIONAL FURNITURE MANUFACTURING CO., INC.,

Evansville, Ind., May 7, 1953.

Hon. SAMUEL K. McCONNELL, Jr.,

*Chairman of the Committee on Education and Labor,
House of Representatives, Washington, D. C.*

DEAR MR. McCONNELL: Recently, I sent a transcript of the National Labor Relations Board hearing along with the entire process leading up to this hearing to Mr. D. Bailey Merrill, our local representative, and asked him to forward me the name of the person in charge of hearings in the House of Representatives in regards to labor. He has forwarded me your name.

I believe this case is unique in that this company has not been organized for over 33 years. It seems it has been and is exceedingly important that this company be unionized from the standpoint of the union officers and each time they have failed. There have been many, many union attempts at this plant.

We have continued to sell our people the way of life which we think is proper. Thus, you have testimonies and recordings of speeches, et cetera, which you would not have in the ordinary election. These are all in the NLRB file and can be obtained for the records for your committee.

I would appreciate your reading, first, my conclusion beginning on page 365 after which I believe you will then have a better understanding of the entire proceedings in this matter.

You will see that manufacturers, for many years, have been denied the rights of freedom. Men such as myself have just as much of a right to our constitutional freedom as do unions or others.

Having served in the United States Army for 4 years I believe that I did an excellent job so that I, too, have a right to the freedoms of America and the protection of those freedoms. I, also, feel that this country must once again return to the basic principles upon which it was founded and I believe in letting the chips fall where they may; only then will we get an efficient America. I don't know whether the politicians of this country realize it or not but they have been hamstrung for the last 20 years by the union representatives just as we manufacturers have been hamstrung. You cannot run an organization, whether it be a manufacturing or political organization, when that organization is hamstrung. It is not efficient and it cannot be honest and sincere and cannot do the job.

The last 20 years has brought forth the evils that are in our country. Many laws have been made and enforced by the many frustrated evildoers who have found their way into Communist fronts and into labor fronts. It has been an outlet for their emotions.

Psychiatrists throughout the country have been advocating free expression and I think even Russia has admitted that free expression, free love, and all the uncontrolled so-called freedoms which are neurosis do not build even a dictatorship much less a democracy. Mankind must have character enough to control his own self. Once he, himself, is under control he can then do a better job. All the laws in the world will not bring this on. It must come from the expression of men such as yourself who are in a position of leadership and from the industrial leaders of this country along with the business leaders and church leaders. Then, and only then, will we have an America built on the firm foundation of democracy as you and I have been taught as youngsters in our school system.

Thanking you and with kindest regards, I remain,

Sincerely yours,

NATIONAL FURNITURE MANUFACTURING CO.,
DANIEL F. CALDEMeyer, *President.*

(The transcripts referred to were filed with the committee, but are not printed.)

CALIFORNIA ASSOCIATION OF EMPLOYERS,

San Francisco, Calif., May 15, 1953.

Hon. SAMUEL K. McCONNELL, Jr.,

Chairman, Committee on Education and Labor, Washington, D. C.

DEAR MR. McCONNELL: I am enclosing photostatic copies of pages of the transcript in the A. L. Gilbert Co. case, which substantiate the testimony given by Mr. Lawrence Gilbert before your committee on April 24, 1953.

Very truly yours,

W. M. CALDWELL, *President.*

(The information referred to above is as follows:)

HARVEY DICKERSON recalled as a witness on rebuttal by and on behalf of the general counsel, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. SCOLNIK.) Mr. Dickerson, I believe you were present in the hearing room when Mr. Lawrence Gilbert testified the other day with respect to his conversation with you on August 4 in his office, when you had returned from your trip?—A. Yes, sir.

Q. According to Lawrence Gilbert's testimony, if I remember correctly, he told you that there was no place for you any more because other men had been fired, that it wouldn't be fair to lay them off to put you back on the job, but that he would let you know later if any opening developed?—A. Yes, sir; he did.

Q. And Lawrence Gilbert further testified that you agreed to that.

Now, Mr. Dickerson, did you agree to that?

Mr. ACKLEY. I will object to that upon the ground that it calls for the conclusion of the witness.

Trial Examiner MYERS. I think you are right. Ask him what conversation he had with respect to it.

Q. (By Mr. SCOLNIK.) Mr. Dickerson, did you say to Mr. Gilbert that you agreed?—A. Well, I guess you could take it one way and someone else would take it another way.

Trial Examiner MYERS. What did you say to him?

The WITNESS. He said there was no opening, and as soon as there was an opening he would put me back on. And I said, "Well, if that is the way it is." And I don't know whether you call that agreeing with him or not agreeing with him.

But I had already been told by two different guys that I didn't have no job, that I wasn't going back to work, and so I just didn't force the issue on him, because you know, if you think a guy don't want to—

Mr. ACKLEY. I am going to object to this, and ask that it be stricken, that he had been told by two different guys that he didn't have a job.

Trial Examiner MYERS. Motion denied.

Mr. ACKLEY. My objection is on the grounds that it is hearsay.

Trial Examiner MYERS. Did you tell that to Mr. Gilbert?

The WITNESS. No, sir; I didn't.

Trial Examiner MYERS. Well, strike out the whole answer.

Now, will you tell us what you said to Mr. Gilbert? Tell us what he said to you and what you said to him?

The WITNESS. He just said as soon as a job became open he would put me back to work, they had hired some new men and had a lot of trouble. And I said, "Well, if that is the way it is." And then we went on talking about something else. That is all I could say. I didn't—

Mr. SCOLNIK. Mr. Examiner, I would like it to be noted on the record that as the witness just testified he said to Mr. Gilbert "Well—" that he shrugged his shoulders as he said that.

Q. (By Mr. SCOLNIK.) Now, when you said to Mr. Gilbert on August 4, "Well—", did you shrug your shoulders in the same way?—A. I just said, "Well, if that is the way it is" [Indicating]

Trial Examiner MYERS. Did you shrug your shoulders and shake your head?

The WITNESS. I just—that is the way I did. [Indicating.]

Q. (By Mr. SCOLNIK.) Did you tell Mr. Gilbert that that was all right with you?—A. Well, I didn't come right out and tell him it was O. K. That is just the way I answered him, because you know, I had been—this is just off the record—

Trial Examiner MYERS. Never mind that.

Mr. SCOLNIK. That is all I have, Mr. Examiner.

Trial Examiner MYERS. Do you have any questions, Mr. Ackley?

Mr. ACKLEY. Yes; I do have a question.

CROSS-EXAMINATION

Q. (By Mr. ACKLEY). Mr. Dickerson, have you had any conversation with Mr. Scolnik regarding what your testimony should be in this case? A. Well, not exactly what it should be. He just asked me last night some questions, but he never told me to say anything.

Q. Did he tell you that if you answered that you didn't have a job when you went back to the Gilberts it would mean \$600 to you?—A. Well, he said that if I didn't think that they wanted me to work—you know what I mean—if I thought that they laid me off on account of the union and the case was the other way I would get some pay. He didn't say how much.

Q. Was any figure mentioned?—A. He was just counting up how many weeks I was off, and said it would amount up to around \$200 or \$300, something like that; maybe a little more. But I didn't know whether they laid me off on account of the union or not, because I joined the union. That was to be seen.

Mr. ACKLEY. I think that is all.

Trial Examiner MYERS. Any questions?

Mr. SCOLNIK. Just another one of two.

REDIRECT EXAMINATION

Q. (By Mr. SCOLNIK). In that conversation I had with you last night, Mr. Dickerson, didn't I tell that if the final decision in this case was to the effect that the Gilbert Co. had unlawfully denied you a job, that you might have back pay coming?—A. That is right, yes, sir.

Q. Depending upon how much money you had earned in the intervening time?—A. Yes, sir.

Q. And I asked you what you had done in the intervening time and how much you had earned?—A. That is right.

Q. And then I asked you how much you would have earned if you had continued to work for the Gilbert Co.?—A. Yes, sir, that is right.

Q. And I tried to make some kind of computation as to what the difference might be?—A. Yes, this is right; you sure did.

Mr. SCOLNIK. That is all.

Mr. ACKLEY. That is all.

Trial Examiner MYERS. You are excused, sir. Thank you very much.

(Witness excused.)

Trial Examiner MYERS. Will you call your next witness, Mr. Scolnik.

Mr. SCOLNIK. Mr. Louis Parker.

Trial Examiner MYERS. You may take the witness stand, Mr. Parker.

SUPPLEMENTAL STATEMENT OF LEONE PECORARO IN BEHALF OF PETITION OF PLYMOUTH BRETHREN IV FOR AN AMENDMENT OF CERTAIN SECTIONS OF THE TAFT-HARTLEY LAW

I make this statement to supplement the prepared statement made by me before the committee on March 13, 1953.

Members of the body known as Plymouth Brethren IV may not join unions because of conscientious objections. While the members are agreeable to paying the equivalent in dues to the Government of the United States or some national charity, they cannot in good conscience pay the equivalent in dues to the union or any of its activities. To do so would be a subterfuge and a compromise of conscience. The petitioners, therefore, wish to go on record with the committee when it considers amendments or changes to the act to have before it this statement that the members of Plymouth Brethren IV object to the payment of dues and similar charges to a union or any of its activities as a condition of employment.

INTERNATIONAL WOODWORKERS OF AMERICA,
Portland, Oreg., April 1, 1953.

HON. SAMUEL M. MCCONNELL, Jr.,
Chairman of the Committee on Education and Labor,
House Office Building, Washington, D. C.

DEAR REPRESENTATIVE MCCONNELL: I have read with considerable interest the statement of John G. Curran before your committee on March 20, 1953, testifying for the Southern Pine Industry Committee at the request of the National Lumber Manufacturers Association.

Mr. Curran stated on page 2850 of the transcript of the hearing, volume 23, on March 20, 1953: "My particular duties are to represent management at the bargaining table in grievances and arbitration." He goes further and states he would like to cite some examples, that we have had in the South, where the National Labor Relations Board has gone beyond its field.

He states there is 1 instance in particular where a strike was in effect for 4 or 4½ months and the Conciliation Service had been called in. In fact, 2 Commissioners of the Service were on the scene when charges were filed of refusal to bargain. The National Labor Relations Board stepped in and called a meeting between management and the union and held these meetings for 3 straight days, 2 of the meetings going to 3 o'clock in the morning.

Mr. Curran goes further and states that they believe in cases like this that the National Labor Relations Board is strictly in violation of the Taft-Hartley Act under section 4 (a), which clearly sets out that the Federal Mediation and Conciliation Service, and only that Service, should handle meetings between management and labor when a strike or labor dispute comes up.

The point that I want to make is this: That Mr. Curran's statement which was made before your committee in regard to this particular situation is strictly hearsay. Mr. Curran did not represent this company, and to the best of my knowledge, this company was not affiliated at the time of this occurrence with the Southern Pine Association. This company, which he refers to, is the Masonite Corp., of Laurel, Miss., and this strike referred to occurred in 1951. He is completely wrong as to the length of time the strike had been in progress. Where he refers to 4 or 4½ months, this instance occurred after the strike had been in effect approximately 2½ months. The entire duration of the strike was 3 months. I was the particular individual representing the International Woodworkers of America, CIO, and I filed these charges against the Masonite Corp. He stated that 2 commissioners of the Conciliation Service were on the scene at the time, and they withdrew to prevent further confusion when the Board injected itself into the meetings. This statement is completely erroneous, and I certainly feel that in all fairness to the National Labor Relations Board, it needs an answer.

Copies of my letters to both the Federal Mediation and Conciliation Service in its Atlanta and Washington offices are available, as well as copies to the Department of Defense, which your committee can subpoena, if necessary, to support the statement that I am making here. It is true that two commissioners of Conciliation Service had been assigned to the negotiations, but in the judgment of the union, they had made no effort to bring the parties together or to attempt to effectuate a settlement at the time these charges were filed. No meetings were in progress between the parties and none were scheduled. In fact, these two commissioners had departed to their respective residences which were Jackson, Miss., and Birmingham, Ala., when I filed the charges.

Mr. Curran states that after these meetings were conducted by the National Labor Relations Board between the company and the union, that an agreement was finally reached, which he stated the company would not have signed under fair collective bargaining.

Once again I must repeat that Mr. Curran's statements were purely hearsay and I would have to go into a considerable amount of background to establish the facts of where this company was definitely in violation.

In 1949 there was another strike with this company, which did indeed last for 5 months. After this strike had gone on for approximately 4½ months, meetings were arranged by the Federal Mediation and Conciliation Service between the company and the union, which were conducted in Birmingham, Ala. Prior to the time that these negotiations commenced, there was in the old contract, a job evaluation plan which was jointly administered by the company and the union. This plan was the basis of establishing rates of pay on new jobs or changing the rates on jobs where the job content had been changed during the life of an agreement. At least a majority of the membership was dissatisfied with the workings of the valuation program and instructed the union negotiations committee that this evaluation program must be eliminated from the contract. During the course of these negotiations, the company, at first, took the position that they would not remove the program from the contract. However, when the negotiations were finally completed in Birmingham, the company proposal was brought back to the membership and was rejected. It was at this point that Fielding Wright, then Governor of the State of Mississippi, stepped into the picture and threatened me with the bringing in of the State guards to assist this company in opening its plant gates, unless I were to agree to take back to the membership, the proposal that had already been rejected by the members, that they might vote a second time on it. After consulting with my executive board, the matter was submitted back to the membership and by a narrow vote the workers did agree to return to work under that proposal. However, several hundred of the workers left the meeting in complete disgust and refused to vote.

Nevertheless, from that point on, this company used the job-evaluation plan by administering it unilaterally and during these negotiations in 1951, we advised this company that they were unilaterally establishing rates of pay where our union had the bargaining rights and was recognized as the bargaining agency for wages, hours, working conditions, and other conditions of employment. While it is true that there were other grievances as well as the job evaluation in the picture, this company had done just exactly that and they definitely were refusing to bargain or to allow the union to participate in this job-evaluation plan which would or does in semblance at least, establish a form of bargaining on wage rates during the life of an agreement. I must repeat that Mr. Curran does not know what he is talking about when he submitted this testimony before your committee in this particular instance.

He also made the statement that the Federal Mediation and Conciliation Service and only that service, in his opinion, should handle meetings between management and labor, when a strike or labor dispute comes up. I want to call to your attention, and I think rightfully so, that the Federal Mediation and Conciliation Service is not an investigating, trial, or enforcement arm of any Federal agency that has anything to do with the act. The only part that the National Labor Relations Board had, in this particular instance, was to determine, by actually sitting in on the negotiations between the company and the union, whether or not the company was refusing to bargain on matters that were rightfully matters of collective bargaining or if they were refusing to bargain; or if they were bargaining in good faith.

I sincerely hope that this will help in a small way to clarify this erroneous statement made by Mr. Curran.

Respectfully yours,

J. E. DICEY,
International Vice President.

CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington 6, D C, April 7, 1953.

HON. SAMUEL K. MCCONNELL, JR.,
*Chairman, Committee on Education and Labor,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: As soon as my attention was called to the testimony of Mr. Charles M. Brooks before your committee on March 25, 1953, with reference to an injunction obtained by the National Labor Relations Board against the General Motors Corp. in 1948, I instituted a review of our files covering the incident to which Mr. Brooks referred. I have discovered that my recollection before your committee was faulty on this point.

I feel compelled to make one observation on this question of the injunction against General Motors. When a potent legal remedy such as an injunction is available, it may at times become the responsibility of the representatives of a labor organization to urge its use in the immediate interest of the employees in a particular situation. The fact is that if legal remedies of this kind are available, they will be used. I cannot feel that the mere fact that the UAW-CIO urged the utilization of this procedure in a particular instance of flagrant violation of law by the General Motors Corp. in any way weakens or affects CIO opposition to the use of injunctions in labor disputes as provided by the Taft-Hartley law.

I regret my memory proved faulty in this instance and I welcome the opportunity to correct the record.

Sincerely yours,

WALTER P. REUTHER, *President.*

INTERNATIONAL TYPOGRAPHICAL UNION,
Indianapolis, Ind., April 15, 1953.

HON. SAMUEL K. MCCONNELL, JR.,
*Chairman, Committee on Education and Labor,
House Office Building, Washington, D. C.*

DEAR MR. MCCONNELL: It will be recalled that during my testimony before the House Committee on Education and Labor, March 24, 1953, the record was held open for an article on the history of the reproduction of ads in the printing industry. It was also requested that we supply for the record and for the benefit of the members of the committee a statement showing 7 or 8 examples of Taft-Hartley and employer pressure which caused the loss of charters in some of

our smaller jurisdictions. Also some of Taft-Hartley procedure which makes it possible for employers to resist collective bargaining to the point of pressuring smaller local jurisdictions into giving up bargaining rights rather than attempt to resist in what is believed under such circumstances to be a futile effort.

Copies of this material have been supplied to the chief clerk of the committee in order that they may become a part of the printed record of the committee hearings. A copy of each of these articles is enclosed for your personal information.

Respectfully submitted.

WOODRUFF RANDOLPH, *President.*

(COMMITTEE NOTE.—The history of the reproduction of ads in the printing industry, referred to in Mr. Randolph's letter, was previously made a part of the record at p 1632, pt. 5. The supplemental information regarding small local unions unable to bargain effectively under the Taft-Hartley Act follows:)

SMALL LOCAL UNIONS UNABLE TO BARGAIN EFFECTIVELY UNDER TAFT-HARTLEY ACT

Prior to enactment of the Taft-Hartley law, employers and local unions contracted for the closed shop; Taft-Hartley law permitted these provisions to continue until the end of the term of the contract but not later than August 22, 1948—after which all such provisions were unlawful. The typical contract provision, which had been included in pre-Taft-Hartley contracts, was " * * * the publisher or firm binds itself to employ in its composing room and the departments thereof, only mechanics and workmen who are members of the union, and agree to respect and observe the conditions imposed by the constitution, bylaws, and scale of prices of the union, and the laws of the International Typographical Union, not in conflict with the terms of this contract. And it is further agreed that the union will use its best efforts to secure the aforesaid mechanics and workmen required by the employer to fill regular situations in his composing room."

This was the meat of the contract, the consideration, the exchange of promises and obligations which made a contract possible. Having agreed to the above, or a similar statement, the parties proceeded to bargain for the wages, hours, and conditions of employment to be in effect during the term of the contract. Many contracts had as many as 50 sections spelling out the wage rates, hours of regular and overtime work, and conditions of employment which were mutual recognition of the rights, or concessions made or exchanged, between the parties. The president of the International Typographical Union then approved the agreement as being in compliance with the laws of the union, and on behalf of the ITU executive council pledged fulfillment thereof.

Also prior to Taft-Hartley there were perhaps a hundred or more small local unions and proprietors who had no written contract to spell out the terms of the agreement. In such instances, the employer verbally agreed and did hire only members of the union in his composing room, and to operate it under the ITU general laws which established the minimum basis of union conditions. The union in turn furnished enough members to perform the work. Bargaining was limited to occasional or periodic wage raises, usually by the employer giving increases to meet prevailing wages in his or nearby towns.

These small unions were without written contracts, or even verbal contracts for a definite term, when Taft-Hartley became law, and they had nothing to extend for a year or until August 22, 1948. In all such cases members continued to work, under the arrangement they had observed for years. But it was no longer lawful to maintain the closed shop, nor for the union to furnish composing-room employees unless the employer continued to hire members voluntarily. In most instances, employers were satisfied at least temporarily to continue the longtime understanding without written contracts.

Across this field of harmony, the Taft-Hartley Act drew the battlelines by prohibiting practices both employers and the union had followed for many years as satisfactory and agreeable, and by imposing upon both parties new responsibilities neither had cared to assume in years past. In all years prior to 1947, contracts had provided:

"That for a term of ----- beginning ----- and ending -----, and for such reasonable time thereafter, as may be required for the negotiation of a new agreement * * * etc.

There was never a threat nor implied threat, of termination of relations; nor any desire of either party to call in Government agencies to interfere if they failed to reach a new agreement 30 days before the old contract expired,

or 30 days after first notice of negotiations—until Taft-Hartley made this mandatory (sec. 8 (d)). There was never any proposed "termination," nor alarming "existence of a dispute" or question of "representation" or "election to determine the bargaining agent" or "appropriate units for bargaining" or "prerequisites to exercise of statutory rights by unions," before Taft-Hartley.

Neither the union nor employers could readily understand nor safely interpret the new law, so foreign to the long-established procedures of local collective bargaining among smalltown publishers and their printers. Through their associations, employers were warned "If you give a wage increase before you sign a contract, you will throw away your best weapon to secure your rights under Taft-Hartley"—so they stalled for time and refused admittedly due wage increases. Local unions were advised "We believe that the harmony of our relations which has prevailed, almost without interruption, for many decades between our members, our local unions and their employers, can continue in the future as in the past, and it is our policy to try to continue it." Many employers joined with the union in doing just that—continuing time-honored practices which were not outlawed by Taft-Hartley. But other employers wanted no such continuance, even of lawful practices. They hid behind their Taft-Hartley protection: That although they were required to bargain, and could do so indefinitely such "obligation does not compel either party to agree to a proposal or require the making of a concession." (But when the union sought to use this same protection, it was charged with "failing or refusing to bargain in good faith.")

Thus the pattern was set for the destruction of small unions, in any case where the employer decided to do so. The union, being required to bargain, could be stalled forever if the employer decided "no bargain had been reached." In the meantime, while endless, fruitless months of negotiations continued, he could withhold admittedly due and overdue wage increases until the less patient printers departed for other cities. Vacancies could be filled by nonmembers, by apprentices and unskilled or semicompetent employees, until the union no longer represented a majority, had become too weak to bargain effectively, and had not enough members left to carry on the business of the union. Where contracts had not been signed in prior years, the employer could and did challenge the union's right to bargain for employees; could challenge on grounds of "craft unit, employer unit, plant unit or subdivision thereof", "inappropriate bargaining unit"; "no certified bargaining agent"; and could destroy the simple jurisdiction of the union over "all work of the composing room" by assigning or reassigning such work to employees of another trade, craft, class, or trainees, apprentices, and incompetent help hired to replace union members.

With such frustration in bargaining (which had not occurred in pre-Taft-Hartley years) and the withholding of wage increases during the indefinite and drawn-out period of "bargaining" under Taft-Hartley, many small unions could not survive. When the Taft-Hartley Act became law, the International Typographical Union had 844 local unions. During the first year under Taft-Hartley the ITU chartered 3 new unions, but lost 17, of these, 15 unions surrendered their charters after dropping to less than 15 members—9 of them had less than 5 members. Even those unions which had never had a written contract, and which sought to maintain harmonious relations as in the past by giving up only those things outlawed by Taft-Hartley, came under the injunction issued by Federal Judge Swygert in March 1948, asked by General Counsel Denham, against refusing or refraining from bargaining and from executing written contracts incorporating terms of the agreement reached. Following issuance of this injunction, the ITU instructed all local unions to notify employers that they "withdraw all previous offers and demands and that they are ready to meet and negotiate new agreements consistent with the terms of the decree."

During the second year of Taft-Hartley, August 1948 to August 1949, the ITU chartered only 2 new unions, but lost 12: of these, all had dwindled to less than 15 members and 7 had less than 5 members.

During the third year under Taft-Hartley, the ITU chartered 7 new unions, and lost 16 unions; of these, 13 had less than 15 members and 8 had less than 5 members. From August 1950 to August 1951, the ITU issued charters to 2 new unions, and lost 11 unions; 10 of these had less than 15 members and 6 had less than 5 members. During the fifth year under the Taft-Hartley Act, the ITU chartered 9 new unions and lost 13 unions, and those surrendering their charters, 11 had less than 15 members and 8 had only 5 or less members. And since August 1952 to April 1, 1953, the ITU has chartered 2 new unions, and lost 9 unions—7 with less than 15 members and 5 with less than 5 members.

In summary, during the nearly 6 years of Taft-Hartley, from August 1947 to April 1, 1953, the ITU has issued only 25 charters but has lost 79 unions—a net loss of 54 unions, leaving only 790. Of the 79 unions lost, 68 had less than 15 members and 43 had less than 5 members. These small unions had become too weak to bargain effectively, and were not strong enough to strike for the wages, hours, and working conditions denied them.

Following are several cases showing how local unions were weakened by loss of the closed shop, and the employers' exercise of other Taft-Hartley "prerogatives" to weaken the union, until it surrendered its charter:

BECKLEY, W. VA

Immediately after enactment of Taft-Hartley, the publisher violated the apprenticeship sections of his contract, and the local union struck to enforce those provisions of the agreement. The contract specified a ratio of 1 apprentice for each 5 journeymen or major fraction. The day shift on the Beckley newspapers had 6 journeymen, entitled to 1 apprentice; the night shift had 8 journeymen, entitled to 2 apprentices. After enactment of Taft-Hartley, employer increased apprentices to 4 on day shift, 3 on night shift—7 apprentices to 14 journeymen. Employer hired linotype operators who had not served apprenticeship or learned printing trade; also refused to pay overtime after 8 hours unless and until employee had worked 40 hours for the week. Strike began August 21, 1947, lasted part of 2 days until publisher agreed to observe most of contract and pay overtime due.

When Taft-Hartley Act became effective this local union had 28 members; but within the next 2 years, union members were replaced one by one with nonmembers, semiskilled men, women, and boys, until late in 1949 the union had only 3 members left and surrendered its charter.

RAPID CITY, S. DAK.

In September, after Taft-Hartley became law, this union and the employer made a verbal agreement, mostly for wages. Employer posted a memorandum of the terms, which was not signed; the union did not protest, and annually for 3 years received such wage increases as the employer chose to allow. During these 3 years, employer instituted a bonus plan which paid favored members \$10 to \$30 a month at employer's discretion. The foremen and several favored employees dropped out of the union, and as vacancies occurred nonmembers were hired to fill the jobs. In July 1950, the union gave the Taft-Hartley 60-day notice of termination of the verbal agreement, and desire to bargain for new contract; but by this time, only 12 of the 22 employees were members of the union. The publisher ignored the notice given by the union; but on August 1, 1950, gave each employee a mimeographed copy of the following:

"To the Journal Composing Room Employees:

"As you know, the working arrangement between your group and the Journal expires September 1, 1950. We are prepared to meet with your committee, and suggest that you name the committee in the near future

"It is our desire that this committee be named by both union and nonunion members in the shop, and would appreciate it if you would so advise that this has been done. We will be ready to talk to you soon at the convenience of both parties, when a date can be arranged.

"The JOURNAL MANAGEMENT"

Publisher then submitted a proposed contract to the union which was rejected. The union submitted its contract proposal, which publisher rejected. Since bargaining became deadlocked, and a strike was not practical by the weakened union, members voted unanimously to surrender its charter on December 3, 1950

GETTYSBURG, PA.

The Times and News Publishing Co was only employer of union printers and hired 13 journeymen when Taft-Hartley law was passed. Contract expired in April 1948 and members worked without contract after that date. By November 1952, only 5 members remained, the other 8 having been replaced by 12 nonmembers. After the union lost its majority position it was not able to bargain nor to maintain union conditions or wages. Loss of the closed shop killed this union and it surrendered its charter in November 1952.

HASTINGS, MICH.

This local had 8 members when Taft-Hartley became law; its contract expired in January 1948. Nearly 2 years later the president reported: "There are now 4 members. Employer stated it was necessary to hire anyone available to keep his doors open, inasmuch as union had failed to supply needed help as agreed" (But Taft-Hartley prevents such agreement to furnish all help.) "He also refused to sign a new contract." On December 12, 1949, president reported: "After several weeks' negotiation without success, we have decided to dissolve our local union. Employer states that he has decided to form a company union and 'get by' with apprentice help, or any help available." This union could have kept its charter and maintained union conditions had it not been prohibited by Taft-Hartley to keep its closed shop and supply composing-room employees.

VALDOSTA, GA.

Following enactment of Taft-Hartley, the publisher in October 1947 posted a notice that the company was increasing wages 10 cents per hour, but such action was not to be considered a renewal or extension of the expired contract. The union had 9 members. The members accepted the increase as a temporary relief, but did not bargain for a new contract at that time. In June 1948 the secretary reported: "The publisher has sent 3 or 4 GI's to a linotype school and tells about Valdosta that he will bust the union—only a few weeks for these men to learn to operate machines to take our places." A month later some of these nonmembers replaced union members. When the union asked for a new agreement and more wages, publisher refused to have any dealings with the union. The president and vice president of the union were given foreman and machinist jobs with increases on condition they dropped their union cards. The four remaining members who would not "rat" surrendered the charter and left the city in July 1948.

ROME, N. Y.

This union had only five members when Taft-Hartley became law. Years before the union had lost a strike against the newspaper, where 31 nonmembers were employed. To bring its membership up to minimum strength, the Rome union began a campaign of organization among the nonmembers on the newspaper. A report on January 31, 1949, states: "The publisher knows his employees are talking organization. He has voluntarily increased wages by \$4 a week and laid off the most aggressive member of the organizing committee 2 weeks before Christmas. He is planning to lay off others whom he suspects are active toward organizing. He is hiring new green help and is compelling the rest of the force to work overtime." With this obvious opposition confronting them, the Rome members asked assistance of a sister union, Utica, N. Y., some 12 miles away—and with this assistance some 10 months later had organized a majority of the newspaper employees as provisional members. But since it was a newly organized shop, publisher did not have to recognize the Rome union (then dwindled to 2 old-age pensioners and 2 proprietor members) as bargaining agent. The Rome members surrendered their charter and jurisdiction was given over to the Utica local, a strong union with more than 150 members, in November 1949. The Rome publisher then agreed to bargain with the Utica union representing his employees and a contract was signed. But the Rome charter was lost.

BROWNSVILLE, HARLINGEN, AND McALLEN, TEX.

Daily newspapers in these three cities are operated by the Hoiles chain as a division of Freedom Newspapers. Of the 10 cities in which this chain has operated newspapers under nonunion foremen and open-shop policy, 5 cities have lost typographical union charters. Tactics follow a standard pattern and the experience here is typical.

On October 19, 1949, unions at Brownsville, Harlingen, and McAllen adopted identical contract proposals for the purpose of dealing jointly with the three papers which had a single general manager; but before the scale committees secured a meeting with management identical "memos" were posted November 12 in composing rooms of all three newspapers by the publishers, stating that "The following working conditions, wages and hours, methods of settling disputes, etc., will be in effect beginning November 12, 1949."

Paragraph 1 gave a voluntary increase in wages, established an apprentice percentage scale, and provided for overtime pay. But it made no mention of ratio of apprentices, or apprenticeship standards, or apprentice committee. Para-

graph 2 provided an 8-hour day and 40-hour week. Paragraph 3 continued the company policy of giving vacations to employees. Paragraphs 4, 5, and 6 indicate the publishers' plan to ignore the union, dominate the employees' groups, and impose its own "conditions of employment." They are:

"Disputes.—Organization of an employees' committee is invited for the purpose of bringing to the attention of the foreman any grievance or dispute. Any unsettled grievance or dispute covering working conditions or the provisions of this memorandum may be referred to the joint standing committee, or to a board of arbitration, as provided in bulletin A, which is posted herewith.

"Foreman.—The foreman, as representative of the company, is to be sole judge of competence. He shall assign all work, employ all help, direct all operations, authorize all overtime, keep time records, post the office rules and give out all other information necessary to the efficient conduct of business in the department. He may discharge for incompetence, violation of office rules, neglect of duty, disorderly conduct, and other justifiable causes, but appeal from the foreman's orders, if considered unfair or in violation of this memorandum, may be made to the joint standing committee as elsewhere provided. The foreman's orders shall be obeyed until the question is decided by said conciliation or arbitration.

"Conclusion.—It is the wish of the company that all employees, regardless of nationality or color or of membership or nonmembership in any church or other organization, be assured that they have equal rights and privileges under the terms of this memorandum. It is also hoped that this memorandum will provide a broad basis of mutual understanding between employees and the company, and that employees will feel free to present any suggestions that may lead to a still better understanding."

The bulletin A mentioned provided for complete arbitration of all matters; it did not exempt union laws not in conflict with established conditions or civil laws and not affecting operation of the newspapers. The unions did not accept this type of compulsory arbitration, nor this type of foreman-dominated operation, and continued to try to secure collective-bargaining meetings which were consistently denied. At this time the three unions had a total membership of 48 journeymen. Unable to bargain jointly or separately, men became discouraged and began dropping out of the union or leaving for other organized cities. Within 3 months, Brownsville members surrendered their charter, leaving about 20 members in Harlingen and McAllen. After a year of fruitless attempts to secure bargaining meetings, the McAllen union surrendered its charter in February 1951, leaving only eight members at Harlingen. A year later this local surrendered its charter too, and the company had completed the destruction of three unions.

CLOVIS, N. MEX.; COLORADO SPRINGS, COLO.; MARYSVILLE, CALIF.

This same Hoiles chain had used this same pattern for forcing lockouts upon local unions at Clovis, Colorado Springs, and Marysville before enactment of the Taft-Hartley law—violating the closed-shop agreement by hiring nonunion foremen who were well-known strikebreakers and violating the jurisdiction of the union over composing-room work by assigning it to nonprinters and nonmembers. Picket lines and other lawful protests were used for many months—until during August 1947, when the Taft-Hartley law legislated out of existence and made unlawful the main issues of the lockout. Clovis, with only three members left, surrendered its charter. Members at Colorado Springs and Marysville were able to hold onto their unions only because other employment was found for members locally, although the Hoiles lockout continues.

OTHER UNIONS DIE OUT UNDER TAFT-HARTLEY

A long list of local unions which passed out of existence because they were unable to bargain under Taft-Hartley could be cited, but their cases are a repetition of the above typical examples. Below are a few outstanding instances, showing how local unions dwindled to almost nothing before giving up to the stronger positions of employers who would "bargain forever but never agree to anything."

Name of union	Date of surrender	Membership before Taft-Hartley	Membership, final report
Newport, R. I.....	July 1948.....	14	3
Biddeford, Maine.....	August 1948.....	11	2
Dunkirk, N. Y.....	December 1948.....	15	3
Beloit, Wis.....	do.....	11	2
Sturgis, Mich.....	December 1949.....	20	9
Beckley, W. Va.....	do.....	28	3
Greenwood, Ind.....	August 1950.....	10	4
Waukesha, Wis.....	January 1952.....	13	2
Cleburne, Tex.....	April 1952.....	10	2
Creawfordville, Ind.....	do.....	13	4

Without Taft-Hartley prohibitions and interpretations, employers and the unions recognizing the closed shop, union foreman, and responsibility of the union to secure competent help, could have proceeded under free collective bargaining to negotiate the wages, hours, and working conditions—and saved these unions from unnecessary and unwanted death.

INTERNATIONAL TYPOGRAPHICAL UNION,
Indianapolis 6, Ind., May 7, 1953.

Mr. JOHN O. GRAHAM,
Chief Clerk, Committee on Education and Labor,
Washington, D. C.

DEAR MR. GRAHAM In accordance with the practice of the House Committee on Education and Labor and with the permission granted by your letter of May 5, I am hereby filing a copy of my supplemental statement in rebuttal to the testimony of certain witnesses concerning laws and practices of the International Typographical Union, to be included in the printed record of testimony taken by the committee in respect to proposed amendments to the National Labor Relations Act, 1947.

A copy of this statement has been sent to the individual members of the committee.

Thanking you for your kind cooperation in this matter, I am

Cordially and sincerely,

WOODRUFF RANDOLPH, *President.*

(The supplemental statement of Mr. Randolph is as follows:)

SUPPLEMENTAL STATEMENT BY WOODRUFF RANDOLPH, PRESIDENT, INTERNATIONAL
TYPOGRAPHICAL UNION, MAY 11, 1953

During the course of the public hearings before this committee with respect to proposed amendments to the National Labor Relations Act, 1947, spokesmen for various segments of management in the printing industry appeared to present testimony of their experience with the closed shop, the union shop, maintenance of membership, checkoff, and other aspects of unionism. Among those spokesmen were Elisha Hanson, general counsel for the American Newspaper Publishers Association, and Arthur Snapper, president of the Union Employers Section of the Printing Industry of America.

All statements based on alleged quotations attributed to President Randolph by Mr. Hanson are hereby categorically denied. It is pointed out to the members of the committee that in no instance did Mr. Hanson disclose the source of his information; neither did he use quotation marks.

By reason that some of the employers represented by these associations employ members of the International Typographical Union, these spokesmen claim to speak as fully representative of both segments of the newspaper publishers and operators of commercial printing plants. Rather than confining their testimony to an unbiased report asked for by the committee, these representatives utilized the time allowed them before the committee to attack and vilify the International Typographical Union and the elected officers thereof. The printed

testimony of these witnesses contains deliberate lies, misrepresentations, half-truths, alleged quotations lifted out of context, and false charges, which constitute a document that viewed in its entirety, is a deliberate smear of the Nation's oldest and most responsible trade union.

In limiting the volume of this supplementary statement, it would be impossible to reply in detail to all lies and misrepresentations contained in the testimony of Mr. Hanson and Mr. Snapper. It is, however, the purpose of this statement to refute the completely unfounded charges contained in the testimony, and to make it plain to the members of this committee that such testimony constitutes an insult to the intelligence and good conscience of the members of the committee.

In his prepared statement to the House committee, Hanson insists "Congress should determine what should be done about a labor organization which defiantly refuses to comply with the law and asserts it will not subject itself to the procedures set forth therein." He complains that the ITU has adhered to its adopted policy "that local unions do not seek to qualify as representatives under the Labor Relations Act," and that the ITU "neither needs nor wants any part of the Taft-Hartley law." He alleges the ITU is "operating outside the law and in defiance of the law," and is "disqualified by the refusal of its officers to comply with the act." He contends that the ITU has an "illegal bargaining policy still in effect," and distorts 5-year-old history to support such contention. He complains that the "ITU refuses to arbitrate," and says it "has defiantly and persistently evaded and avoided the impact of the law on its traditions and policies." He concludes with the charge: "It is still defiant. It still asserts that of its own volition it will not proceed under the law."

All of this without any supporting evidence, without attempting to prove his irresponsible statements, and without citing any available source of his information if any. Many questions are not identified in any way. The facts are:

The ITU has not at any time refused or failed to comply with any order of the NLRB or the courts interpreting any provision of the Taft-Hartley Act. The ANPA, represented by Hanson, insists the ITU ignored the order of the Board in the ANPA case. This is gross misrepresentation. It has never been alleged that there has been any violation of the order since it was entered, in 1949. It has been scrupulously complied with, even though Senator Taft has since characterized a principal provision of that order as "wholly unreasonable" (hearing, Senate committee, April 1, p. 898). No contempt or other proceedings have been instituted claiming noncompliance. The ITU has never sought to operate in defiance of the law.

And the fact is: No Federal law requires an employer or a labor organization to accept arbitration. The ITU is not in violation of any law because it has for more than 30 years refused to accept ANPA-style arbitration. But in all proposed contracts of local unions, three different sections propose impartial arbitration of matters involving employers and employees.

The Taft-Hartley Act does not require a labor union to petition the NLRB for a representation election or to qualify as representatives under Board procedures. The law simply makes such action available to local unions seeking and qualifying for it. It is true that the ITU neither "needs nor wants any part of" such available services of the Board. It is true that the ITU along with almost all other labor organizations and many Senators and Representatives, have consistently demanded repeal of Taft-Hartley. Neither activity is illegal, nor un-American, nor outside the law, nor in defiance of the law.

Hanson and his ANPA assert the ITU has ordered many strikes "to make union law supreme," "to beat Government law with union law," and that members "are not willing to work under United States laws." They know full well that ITU is powerless to order a strike, and that all strikes are ordered by secret ballot referendum of local union members actually working at the trade.

The facts are Every strike voted by a local union and approved by ITU during the last 6 years, was called or was continued to procure an agreement held by the Federal courts to be lawful under the Taft-Hartley Act. When such agreements were reached, the strike ended. But at Chicago, for example, the publishers allowed a strike to continue for more than a year after a Federal court had specifically found the agreement demanded by the local union not to be in violation of Taft-Hartley.

Also found in the testimony of both Mr. Snapper and Mr. Hanson is the outright lie that since passage of the Taft-Hartley Act the International Typographical Union has persisted in operation of closed shops. Such a charge goes beyond the realm of mere misrepresentation, because those individuals who make the

charge and every individual publisher who holds a contract with a subordinate union of the ITU knows that it is not true. The ITU has not sought closed shop contracts since the Taft-Hartley law was adopted, and it has had no strikes over that issue. The defense efforts of the union have been for the purpose of holding such working conditions as permitted by law and to increase wages and reduce weekly hours of work.

Throughout its history, the ITU has never been a closed union. It is a selective union based on competency and character, and the book of laws itself provides that one who is not a member of the union but is only applying for membership—and is turned down by the local union—has the right to appeal to the executive council of the International Typographical Union to see whether or not there has been any unfair rejection of his application. Since 1944, there have been some 167 appeals of this nature upheld, and the local unions were instructed to admit them under the laws of the union to membership. This procedure guarantees full access to membership in the union and refutes the charge of industry representatives that all newcomers must enter the union through the process of an apprenticeship, and no other way. Since passage of the Taft-Hartley Act, there has been no charge brought against the union by any individual that he has been discriminated against by reason of not being a member of the union.

Hanson also stated before the House committee: "Any individual member of this union or any group of its members constituting a subordinate local who fails to comply with the dictates of the international president as set forth in sections 2 and 4 of article III of its general laws, is subject to summary expulsion and article IV, section 42 of the bylaws. The ITU has exercised this power and I cite the instances in my statement." Later, Hanson states only Mansfield, Ohio; Fort Smith, Texarkana, and Hot Springs, Ark.

The facts are: No member or group of members of the ITU has ever been expelled, summarily or otherwise, from the ITU for failure to comply with sections 2 and 4, article II of the general laws and there is no provision for such expulsion of members by the executive council found anywhere in the ITU laws. Every member and every local union has an absolute right to appeal from a decision of the executive council, to the annual convention, whose delegates have final authority and may sustain or reverse the executive council. Section 42, article IV of the bylaws provides expulsion only in cases wherein members or local unions refuse to accept and observe a decision of the executive council pending an appeal to the next annual convention, or when such member or local union refuses to accept and observe the decision of the convention on an appealed matter. There is no provision in the ITU laws whatsoever, for expulsion by the executive council, for any matter in connection with collective bargaining. Only one person has been expelled by the Executive Council since enactment of Taft-Hartley—that a former local union secretary, for misappropriation of funds and refusal to reimburse the local union for his default.

Hanson further stated before the House committee that "Sometime in this period one of the representatives, and I mean the ITU has these representatives who go around to advise local unions on how to conduct their affairs, went into the town of Mansfield, Ohio, and ordered the local union to take a strike vote. When a vote was taken the necessary majority was not there, and he ordered the secretary of the union to record the majority, as I was informed, and the secretary refused and the Mansfield charter was revoked because they didn't carry out the orders from Indianapolis to call a strike."

The facts are: Although its contract had expired several times since Taft-Hartley, this union consistently renewed and extended illegal "Conditions of Employment" agreed to by the publisher in 1946. The local was repeatedly told such contracts were illegal under both Federal and ITU laws and were warned not to renew or extend such agreements. Although the last illegal contract did not expire until October 1950, a local bargaining committee, without consulting either the ITU or the local union members, renewed and extended the contract in June 1950. Therefore the charter was revoked. But no strike vote was ever asked, approved, ordered, or taken. No member was expelled; all members in good standing were issued traveling cards and their full membership thus protected. No penalties were invoked or imposed.

Presenting further "evidence," Hanson states: "Or Fort Smith, Ark., where the union was directed to call a strike and refused and had its charter revoked." And, "At Fort Smith, Ark., the union entered into an agreement with the publisher that was satisfactory to them and the local union had been getting along all right with the boss for a long time and didn't see any reason why it should

be upset simply because the law had been changed by Congress. So it got the wage it wanted and went on. And Mr. Randolph notified the publisher down there that he was no longer dealing with any ITU local, that the charter had been revoked."

The facts are: The ITU has repeatedly told local unions they cannot make illegal contracts, even if "the boss is willing" and members can't see any reason why they should "be upset simply because the law had been changed by Congress." No representative of the ITU advised, assisted, or participated in the negotiation of the illegal contract. No ITU representative visited Fort Smith to order a strike, nor attended any meeting of the union before the charter was revoked. The authority to issue a charter carries with it the equal authority to revoke that charter for cause. The charter was revoked for signing an illegal contract. No member was disciplined, no penalty was imposed, and no member was expelled. When members agreed to bargain only for legal contracts according to law, the union charter was restored.

Continuing, Hanson states: "Nor do I find Texarkana, Tex., and Hot Springs, Ark., where the unions were ordered to strike and did strike and are now walking the streets and receiving strike benefits while their employer conducts his business." Although no further mention is made of Hot Springs, Hanson says: "Now, I cite in my statement here the orders given by his (Randolph's) representative to the local at Texarkana, Ark., where they were told not to enter into any kind of agreement and if necessary to strike in order to get what the executive council wanted. They struck and they are still on strike."

The facts are: The Hot Springs local did not strike. It voted unanimously not to strike and members continued working for several days and nights. When the publisher could not force the men out otherwise, the shop was swamped with strikebreakers already recruited and imported for that purpose, and the men were crowded off their jobs. They are paid **lockout benefits**.

The Texarkana and Hot Springs unions (same publisher) had no contract for many years. They had a low wage and a discriminatory bonus system which is prohibited by ITU laws. They did not bargain for contracts. The ITU representative finally informed both unions of the policy of the union, that local unions when opening collective bargaining must have written proposals conforming to ITU and Federal laws, and must sign such contracts when agreement was reached. They were instructed to make no other kind of agreement. Because the publisher could no longer continue his illegal arrangement, he recruited and assembled strikebreaking crews. When they were brought in and put to work, the union members were crowded out. At no time was any local union ordered to strike or to take a strike vote; no member was penalized, and no member "summarily expelled."

In another action Hanson and ANPA have proposed amendment of section 8 (b) (6), to include as an unfair labor practice, to cause or to attempt to cause an employer to pay an exaction "for permission to use any process or machine," and to "cause or attempt to cause an employer to enter into an agreement not to use any new process or machine." The facts are:

The ITU and its local unions have never proposed, demanded, caused, nor attempted to cause, nor accepted, any payment from any employer for permission to use any process, method, or machinery. It has always been the publishers' prerogative to furnish whatever equipment he wants used, and to use any method or process he wants. It has always been the printers' business to learn and to master new machines, new processes, and new methods, and for more than 100 years they have done so. All necessary matters concerning the introduction of new machines, methods, or processes are mutually agreed upon in collective bargaining, and traditionally the two parties have worked in close cooperation to make such things work successfully and for greater advantage and profit to all concerned. Hanson would bar such cooperation and such bargaining. Even before the day of written contracts, before the turn of the century, it was mutually agreed by both parties that there should be no stoppages during the life of the agreement and that no change should be made in existing conditions until the parties had negotiated an agreement as to the change. This is the safeguard for labor-management peace which Hanson asks Congress to junk.

Hanson's amendment also would make it an unfair labor practice to propose or to agree upon reproduction. This practice is more than 80 years old; it was worked out by mutual agreement of both parties in collective bargaining and a complete statement about it has been made a part of the record. Both the NLRB and the United States Supreme Court have decided against Hanson and the ANPA in this matter and have held the practice to be entirely legal and of

value to the industry. When Hanson cannot win before the Board, he appeals to the Supreme Court. When he cannot win before the Supreme Court, he appeals to Congress to override the sound thinking of these tribunals and destroy the results of the considered judgment of those who have bargained about this subject matter for many years. This is plain union busting and further destruction of free collective bargaining.

Besides the deliberate lies and misrepresentations offered to the committee by Mr. Hanson, he attempts to create the impression with members of the committee that the continued existence of the International Typographical Union constitutes a threat to the future well-being of the printing industry. Mr. Hanson said, "There are far less contracts in the newspaper field than there were prior to the beginning of this war and there are going to be less as time goes on unless that union (ITU) complies with the law and bargains in good faith."

The fact is there are more signed contracts in effect between local unions of the ITU and employers in the industry than at any previous time in the 100-year history of the organization. The citing of any specific number of contracts currently in effect is not indicative of the relative condition of labor-management relations in the industry because one contract may embrace dozens of shops within the jurisdiction of one local union. Such, for example, is the case in the newspaper field in the city of New York, where a single contract signed by New York Typographical Union, No. 6, governs the relations of members working in the composing rooms of 11 newspapers. The increase in the number of contracts between employers and subordinate unions of the ITU has also been accomplished despite a steadily decreasing number of daily newspapers brought about through suspensions, mergers, and consolidations—newspapers no longer able to meet the monopoly conditions created and maintained by some members of the American Newspaper Publishers Association. The present condition of the industry—which Mr. Hanson characterizes by implication as being "unhealthy" because of the action of the International Typographical Union—is just not true. The condition exemplified by the number of contracts between employers and the ITU is just the opposite of that presented by Mr. Hanson.

Mr. Hanson's testimony before the House Committee on Education and Labor contains an example of skillful use of the cleverest deceit ever practiced by the accomplished propagandist. He has sandwiched an incident lifted from a report of the president of the ITU to the members of the union contained in the April issue of the Typographical Journal between two outright lies that the ITU is a closed and totalitarian union in an effort to have the members of the committee believe that the totally unrelated incident will support the greater lie—which he knows to be a lie. The section referred to in Hanson's testimony reads as follows:

"The closed shop backed by a closed union is but a form of totalitarian rule in which the individual's rights are subordinated to those of the organization. I want to digress a moment at this point to point out that only within the last few days the president of the International Typographical Union has called upon some 300 employees of the Government Printing Office in Washington, members of that union, to get out of the union because they disagree with him on his policy of opposing the Taft-Hartley Act and the methods used to carry out his opposition. If there be any doubt in the committee's minds as to his attitude on the matter, it can be found stated in his own words in the April issue of the Typographical Journal, the official organ of his union.

"All that one needs to recognize the fact of the totalitarian form of a labor organization is to study the constitution and bylaws and general laws of the ITU * * *

By surrounding this reference to President Randolph's report, which itself is incorrectly stated as to fact, with such obvious lies, Mr. Hanson attempts to create the impression that the reference made to Government Printing Office members corroborates the lie that the ITU is a "totalitarian" organization. If such an implication were true, there would be no need for the president of the union to report to the membership of the union an action taken by some few individuals thereof. The members of the ITU have always exercised the right of free speech, a right that is also accepted by the officers of the union. Through the pages of the Typographical Journal, the president exercised his right to talk to the membership of the union, informing them of an action by certain members of the union. Mr. Hanson knows that there is no provision for expulsion of members by the executive council for such activity to be found anywhere in the ITU Book of Laws. The 300 members referred to are still members of the

union. Their letter and names signed were fully and correctly quoted in the article by the president.

Hanson makes much of the specious claim that his organization is protecting "freedom of the press"—but ANPA has historically sought for its members and for itself "special immunity from the application of general laws." It is not new for the ANPA to confuse "freedom of the press" with the "economic interests of publishers"—this flag has been waved in resisting the application of the antitrust laws, the child-labor laws, the Wagner Act, the Fair Labor Standards Act, the price stabilization laws and many others, to newspaper operations.

The facts are that the laws of the ITU contain no single word addressed to the content or editorial policies of newspapers. No union has ever proposed, negotiated with, or entered into any agreement with any publisher as to what he shall print in his newspaper. The ITU has historically cooperated in supplying skilled printers, even to those publishers who abused their freedom of the press to launch scurrilous attacks upon the union. The laws and policies of the ITU, adopted by the members themselves, are directed only to their self-protection and welfare, and not to the contents of any newspaper.

The testimony has been refreshing and useful in one respect: Its candor. It reveals clearly the objective of Hanson and the ANPA, and the PIA, to debase working standards in the industry by nullifying the levels achieved through the laws of the ITU and through free collective bargaining. Its false cries of accusation and its false assertion of self-righteousness do not conceal their real purpose and objectives: to destroy labor unions by law.¹

WASHINGTON, D. C., May 11, 1953.

HON. SAMUEL K. MCCONNELL, Jr.,
Chairman, Committee on Education and Labor
House of Representatives, Washington, D. C.

DEAR MR. MCCONNELL: I am informed that Mr. Randolph has filed a supplemental statement with the Senate committee dealing, *inter alia*, with my testimony both before your committee and the Senate committee. He asked that his statement be incorporated in the record.

In the thought that he may have filed a similar statement with your committee and made a similar request, I am enclosing herewith a copy of a letter I have addressed to Chairman Smith of the Senate committee, together with attachments, with the request that it be incorporated in the record. If the House committee has received such a request from Mr. Randolph and has granted it, I, therefore, request that this copy of my letter to Senator Smith and the enclosures be incorporated in the record of the House committee, and that the salutation be to you rather than Senator Smith.

Sincerely,

ELISHA HANSON

(The letter referred to is as follows:)

WASHINGTON, D. C., May 11, 1953.

HON. SAMUEL K. MCCONNELL, Jr.,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: My attention has been directed to a supplemental statement filed with your committee on May 7, by Woodruff Randolph, president of the International Typographical Union. In this statement Mr. Randolph, in his characteristic fashion, brands the testimony of witnesses who appeared before you, including that given by me, as not true.

Without in any manner attempting to indulge in Mr. Randolph's peculiar style of abuse, I desire to call your attention to these facts:

1 Randolph denies that the ITU is still seeking to maintain closed-shop conditions.

¹ In an address by Sumner H. Slichter, Lamont University professor of Harvard University, presented at the labor-management conference of the Wharton School of Finance and Commerce, University of Pennsylvania, on April 10, 1953, while discussing Coming Developments in Labor Relations, Dr. Slichter said: "The Taft-Hartley Act does not even permit the closed-shop subject to the obligation of unions to maintain an open door and to deprive no one of membership arbitrarily. I think that the Taft-Hartley Act in this respect goes too far and that the closed shop with proper safeguards should be permitted."

Comment

(a) On December 11, 1953, George Meany, president of the A. F. of L. spoke at a luncheon before the National Press Club. The following day the following item appeared in the Wall Street Journal:

"In this connection, Mr. Meany took pains to chide newspaper publishers who have printed editorials commending the Taft-Hartley Act's ban on closed-shop contracts. Publishers may be against the closed shop, he said, but they still don't want their plants a battleground. So year after year they go on 'having their papers printed closed shop.' He was referring particularly to contracts between publishers and the International Typographical Union."

(b) On May 6, 1953, the National Labor Relations Board entered its supplemental decision and order in the case entitled *"In the Matter of International Typographical Union and Its Agents, Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, and American Newspaper Publishers Association"*.

In its order it directed the ITU and its officers, specifically naming Mr. Randolph, to cease and desist from refusing to bargain in good faith with newspaper publishers. In its decision the Board said, *inter alia*:

"As we pointed out in the Printing Industry of America case, the records in the ITU cases, including this one, indicate strongly the respondents' disposition to use the bargaining table as a means of obtaining closed-shop conditions by one device or another. We have ample reason presently to believe that this disposition still exists. For, notwithstanding the union's asserted discontinuance of the bargaining strategy here found specifically unlawful, the very same closed-shop policy it was designed to implement, still forms an essential part of the aims of the union, as expressed in its general laws. We cannot but reasonably infer, therefore, that it is possible, if not highly probable, that the respondents may resort to other devices to effectuate their closed-shop objectives in future negotiations with employers in the industry, unless effectively restrained. Illustrative of this possibility also is the fact that (1) the change from the conditions strategy to the 60-day contract proffer followed the issuance of a complaint charging the respondent international with unfair labor practices because of its employment of the conditions strategy, and (2) the abandonment of both this device and the 60-day contract occurred only after the Federal district court issued its injunction in March 1948.

"Moreover, the conduct specifically found violative of the act herein, goes to the heart of the collective-bargaining obligations imposed on unions by section 8 (b) (3) of the act. This is so, as we pointed out in the Chicago case, not only because of the illegality of the objectives sought to be attained but also because, wholly apart from such objectives, the respondents sought by their insistence on the unilateral promulgation of the conditions of work, and/or by their proffer of P-6A, to preclude a truly mutual basis for the stabilization of employment conditions.

"In the light of the foregoing, we find that the policies of the act can best be effectuated by enjoining the respondents from refusing to bargain not only by devices designed to establish unlawful closed-shop conditions, but also by any means tending to interfere with the establishment of genuine collective bargaining on a basis of mutuality."

A copy of the supplemental decision and order of the Board is attached hereto and request is made that it be printed with this statement.

(c) The bargaining policy adopted by the ITU in 1947 is still in full force and effect as evidenced by its general laws effective January 1, 1953, governing its subordinate locals for the current year.

2. Randolph says, "The ITU has not at any time refused to or failed to comply with any order of the NLRB or the courts interpreting any provision of the Taft-Hartley Act."

Comment

(a) The decision of Judge Swygert in 81 Federal Supplement 675 holding the union in contempt for its violation of his decree enjoining it from pursuing its policy designed to maintain closed-shop conditions in newspaper composing rooms as set forth in 76 Federal Supplement 881 demonstrates the falsity of such a statement in respect of the courts.

(b) Post Card Bulletin 148, sent out by Mr. Randolph and his fellow members of the ITU executive council promptly after the Board entered its original order on October 28, 1949, informed all members of the ITU that the entry of the Board's order automatically lifted the Swygert injunction restraining the union from pursuing their illegal closed-shop policies and that they would be under

no further restraint until and unless the Board's order was enforced by a court decree.

3. Randolph says, "That ITU is powerless to order a strike, and that all strikes are ordered by secret ballot referendum of local union members actually working at the trade." (P. 3.) And again referring to my testimony that the local at Texarkana was ordered by his representative to strike, he says, "At no time was any local union ordered to strike or to take a strike vote."

Comment

Attached hereto is a photostat of a communication addressed by O. L. Crain, Mr. Randolph's personal representative, to John DuVal, president, Texarkana Typographical Union on July 17, 1950, instructing Mr. DuVal to call a meeting of the union on July 18 to take a strike vote.

The Crain letter reads:

INTERNATIONAL TYPOGRAPHICAL UNION
Headquarters, Indianapolis, Ind.

JULY 17, 1950.

O. L. CRAIN,
Representative
827 Southwest 30th Street
Oklahoma City, Okla.

Mr. JOHN DUVAL,

President, Texarkana Typographical Union:

You are hereby instructed to call Typographical Union No. 313 into sessions on the following schedule:

All night-shift workers to meet at 3 p. m. Tuesday, July 18; and

All day-shift workers to meet at 7 p. m. Tuesday, July 18; for the following purpose:

1. To take a strike vote; and
2. To take any action necessary thereto; and
3. To transact any necessary business.

You will notify all members. You are in complete charge. You will sign no paper without my advice. You will post this immediately, and notify all persons claiming membership.

Regular meeting place, Seventh and Spruce.

O. L. CRAIN,
International Typographical Union Representative.

Temporary address until _____19 _____

(If temporary address is given, use only until date indicated. Use permanent address thereafter.)

The foregoing should be sufficient to satisfy the committee as to the extent to which Mr. Randolph will go in his disregard of facts. The instances cited are typical of his entire statement.

Very truly yours,

ELISHA HANSON.

Enclosures:

1. Order of National Labor Relations Board in Case No. 9-CB-5 dated May 6, 1953

2. Post Card Bulletin No. 148 sent out by executive council, International Typographical Union on October 31, 1949.

3. Letter of O. L. Crain to John DuVal, president, Texarkana Typographical Union, dated July 17, 1950.¹

¹ Printed above.

UNITED STATES OF AMERICA, BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 9-CB-5

In the matter of International Typographical Union and its agents, Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd and American Newspapers Publishers Association

SUPPLEMENTAL DECISION AND ORDER

On March 11, 1953, the Board¹ issued its Proposed Supplemental Findings of Fact, Conclusions of Law, and Order in the above-entitled proceeding. Thereafter the Charging Party filed a brief in support thereof, and the Respondents filed exceptions thereto and a supporting brief.² The Respondents also requested oral argument. As the briefs and record adequately reflect the Respondents' position, we hereby deny their request for oral argument.

The Board has considered the Proposed Supplemental Findings of Fact, Conclusions of Law, and Order, the Respondents' exceptions, the above-mentioned briefs, and the entire record in the case, and hereby adopts as its Supplemental Decision and Order herein, the said Proposed Supplemental Findings of Fact, Conclusions of Law and Order, a copy of which is attached hereto, with the following additions:

1. The Respondents object to the proposed unit findings for the reason, among others, that because the "units" are defined by reference to agreements³ entered into more than 5 or 6 years ago, they are "inappropos and outdated." Respondents, however, have apparently misconceived the purport and effect of our unit findings. Our holding that the Respondent's failure to bargain during the 1947 negotiations occurred with respect to employees comprising a unit appropriate reflects the Board's view of the situation existing at the time of the refusal to bargain. Nothing in such holding was intended, or is to be regarded, as a direction to the parties to conduct their bargaining at this date on the 1946 unit pattern, if in fact changed circumstances have made such patterns "inappropos or outdated."

2. As to those cities where the Respondent Union's officials did not *physically* participate in the negotiations,⁴ the Respondents contend that "no finding can be made of a request to bargain" addressed to the ITU, and hence they cannot be held to have refused to bargain collectively. We find no merit to the contention. For we believe that at all times here material, the local negotiators represented the interests of the International and exercised the bargaining powers granted it.

In concluding, in the *Chicago* case, with Court approval,⁵ that the International was also a duly designated bargaining representative of the employees, we relied in part on the internal laws governing the relationship between the International and its locals. Thus, we found that under these laws "there is no stage of negotiations in which the International does not actively participate, even though its officials may not physically be present". Such active participation by the International—even without its physical presence—in any given bargaining negotiations obviated the necessity for any prior request to bargain directed

¹ *Members Peterson and Styles not participating.*

² Pursuant to timely request of the Respondents for an extension of time within which to file exceptions, the Board granted all parties an extension to April 20, 1953. The Charging Party's brief and the Respondents' exceptions and brief were filed with the Board on April 20, 1953.

³ The Respondents' brief apparently suggests that, in Hammond, Indiana, no agreement was available upon which reliance could be placed in determining the unit involved in the 1947 negotiations. It is true that in Hammond, the parties had historically conducted their relations on an oral basis, pursuant to a basic understanding that the Employer would be bound by the terms negotiated by the Union with the Chicago Publishers Association, in operating the composing room, for the duration of the Chicago contract. There is no question that this historical mode of oral agreement for a term definite clearly covered the conventional kind of composing room employees. Nor was there any doubt expressed by either party to the 1947 negotiations here involved as to the unit for which the Employer sought to make a separate bargain when the Chicago negotiations failed. We therefore reject, as without merit, the Respondents' exceptions to our finding that the refusal of the union to bargain occurred with respect to an appropriate unit.

⁴ The Respondents concede that ITU representatives participated physically in the negotiations conducted in Chicago, Illinois, and Detroit, Michigan. The record also shows, as was found by the Trial Examiner, that an ITU representative was present at the negotiating conferences held in New Bedford, Massachusetts, (86 NLRB at p 998). No ITU officials appeared at the Sioux City, Iowa, Albany, New York, or Hammond, Indiana, conferences.

⁵ The portion of the Court's opinion referred to appears at 193 F. 2d 804-805.

expressly to the International. The fact that the International exercised its inherent powers to supervise, control and direct bargaining negotiations⁶ in which its locals participated, and that locals followed such direction and control, convinces us that representatives of those locals which bargained without the physical presence of officials of the International, were acting as agents of the International as well as agents of the locals.⁷

3 In excepting to the proposed cease and desist provisions of the Order, the Respondents contend, in effect, that the refusal to bargain issue here under consideration has been mooted, and no refusal to bargain order should now issue because: (1) the particular bargaining strategy here condemned was discontinued after March 1948; (2) no complaints have issued against the Respondents since that date; and (3) it offered to comply with the cease and desist provisions of the Order heretofore issued in this case. They further contend, for the same reasons, that in any event the Proposed Order is too broad both substantively [by including the phrase "by any other means"] and geographically [by making it applicable to the entire newspaper industry]. We find no merit to these exceptions.

It is well settled that the discontinuance of the particular unfair labor practices found does not render the matters litigated moot, nor prevent the Board from issuing an appropriate order designed to effectuate the policies of the Act.⁸ As we pointed out in the *Printing Industry of America* case, the records in the ITU cases, including this one, indicate strongly the Respondents' disposition to use the bargaining table as a means of obtaining "closed-shop" conditions by one device or another. We have ample reason presently to believe that this disposition still exists. For, notwithstanding the Union's asserted "discontinuance" of the bargaining strategy here found specifically unlawful, the very same "closed-shop" policy it was designed to implement, still forms an essential part of the aims of the Union, as expressed in its General Laws. We cannot but reasonably infer, therefore, that it is possible, if not highly probable, that the Respondents may resort to other devices to effectuate their "closed-shop" objectives in future negotiations with employers in the industry, unless effectively restrained. Illustrative of this possibility also is the fact that (1) the change from the "Conditions" strategy to the 60-day contract proffer followed the issuance of a complaint charging the Respondent International with unfair labor practices because of its employment of the Conditions strategy, and (2) the abandonment of both this device and the 60-day contract occurred only after the Federal District Court issued its injunction in March 1948.

Moreover, the conduct specifically found violative of the Act herein, goes to the heart of the collective bargaining obligations imposed on unions by Section 8 (b) (3) of the Act. This is so, as we pointed out in the *Chicago* case,⁹ not only because of the illegality of the objectives sought to be attained but also because, wholly apart from such objectives, the Respondents sought by their insistence on the unilateral promulgation of the conditions of work, and/or by their proffer of P-6A, to preclude a truly mutual basis for the stabilization of employment conditions.

In the light of the foregoing, we find that the policies of the Act can best be effectuated by enjoining the Respondents from refusing to bargain not only by devices designed to establish unlawful closed-shop conditions, but also by *any* means tending to interfere with the establishment of genuine collective bargaining on a basis of mutuality.¹⁰

So far as the Respondents' challenge of the geographic breadth of the Proposed Order is concerned, there is only one phase of its objections that the foregoing remarks or the Proposed Supplemental Decision do not completely answer. This

⁶ It is very clear from the ITU Laws that it was contemplated by all parties bound by such laws that negotiators designated by the Locals in the first instance, would represent the interests of the International and exercise bargaining powers granted to it. For the Laws contain carefully spelled out substantive and procedural specifications relating to the conduct of bargaining by local-designated negotiators and the terms they must insist upon as a condition of cooperating in the establishment of a collective relationship.

⁷ In addition to the agency evidence provided by the Laws there is specific evidence that at Sioux City, Iowa, and Albany, New York, the reason given by Local negotiators for rejecting the employer's proposals was that such proposals were unacceptable to the ITU (86 NLRB at pp. 993, 998).

⁸ See, for example, *Printing Industry of America, Inc.*, 87 NLRB 1418, (and cases there cited), enforced 193 F. 2d 782 (C. A. 7); *N. L. R. B. v. Meier Textile Mills*, 389 U. S. 563, 17 L. R. B. v. *General Motors Corp.*, 179 F. 2d 221, 222 (C. A. 2).

⁹ 86 NLRB 1041, at pp. 1042-1044.

¹⁰ We note also, so far as the compliance offer contention is concerned, that the decision and order initially issued in this case did not involve refusal to bargain violations.

is that there are portions of the industry which, either by custom or by consent of the parties involved, do not operate under written agreements, and hence that the Board's Order may preclude continuation of such agreements even though they are in no respects unlawful. However, as we have pointed out in another *ITU* case,¹¹ the violation of the duty to bargain imposed under the Act where a proposal is made that an agreement be in oral rather than in written form, arises only if the proposing party adamantly insists upon such form. Our Order does not purport to reach proposals which would not support refusal to bargain findings.

SUPPLEMENTAL ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the Labor Management Relations Act, the National Labor Relations Board hereby orders that:

1 Respondent International Typographical Union, and its officers, agents, and representatives, and

2 Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, their agents and successors, shall:

(a) Cease and desist from refusing specifically, or by insistence upon a 60-day cancellable contract, or by any other means, to bargain collectively and in good faith with any Employer in the newspaper industry, where the employees of such employer comprise a unit appropriate for the purpose of collective bargaining, and a majority of such employees, have designated or selected the Respondent ITU to represent them for the purposes of collective bargaining.

(b) Take the following affirmative action, which the Board finds will effectuate the purposes of the Act: Post immediately in conspicuous places at all halls and offices of the Respondent ITU and its Locals, and all other places where notices to members are customarily posted, and publish in the *Typographical Journal*, official paper of the Respondent ITU, a copy of the notice attached hereto and marked Appendix A.¹² These notices shall be signed by a duly authorized officer of the Respondent ITU, and by the individual Respondents herein or their successors in office, and shall remain so posted and maintained for a period of 60 days.¹³

(c) Notify the Regional Director for the Ninth Region in writing within ten (10) days from the date of this Supplemental Decision and Order what steps the Respondents have respectively taken to comply therewith¹⁴

Signed at Washington, D. C.

PAUL M. HERZOG, *Chairman*,
ABE MURDOCK, *Member*,
JOHN M. HOUSTON, *Member*,
National Labor Relations Board.

APPENDIX A

NOTICE

To all Officers, Representatives, and Agents of the International Typographical Union:

Pursuant to a Supplemental Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT refuse, by specific refusal, or by insistence upon a 60-day cancellable contract, or by any other means, to bargain collectively and in good faith with any Employer in the newspaper industry, where the employees of such Employer comprise a unit appropriate for the purposes of collective bargaining,

¹¹ *Daily Review Corporation, et al.*, 87 NLRB 1263.

¹² In the event this Order is adopted by the Court of Appeals, there shall be inserted before the words "A Decision and Order", the words, "A Decree of the United States Court of Appeals for the Seventh Circuit Adopting"

¹³ The Respondents claim that at great expense to themselves and as part of their asserted compliance with other Board orders, they have already issued notices to all local unions substantially in the form here required, and that hence the Respondents should not be required at this time to do more than publish the notices in the *Typographical Journal*. In the event the Respondents have in fact circulated such notices to the local unions, the Regional Director of course, will not require the Respondents to repeat the circulation of such notices to the local unions.

¹⁴ We inadvertently omitted this conventional paragraph from our proposed Supplemental Order. We have added it here, in accord with our usual practice.

and where a majority of such employees have designated or selected the International Typographical Union to represent them for the purposes of collective bargaining.

INTERNATIONAL TYPOGRAPHICAL UNION,
By WOODRUFF RANDOLPH, *President*.
ELMER BROWN.
LARRY TAYLOR.
DON HURD.

Dated_____

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by other materials

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 9-CB-5

In the Matter of International Typographical Union¹ and its agents, Woodruff Randolph, Larry Taylor, Elmer Brown and Don Hurd and American Newspaper Publishers Association

PROPOSED SUPPLEMENTAL FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

A. *Statement of the Case*

On November 21, 1947, based upon charges filed by American Newspaper Publishers Association, herein called the ANPA, the General Counsel of the National Labor Relations Board, issued a complaint against the above-named Respondents alleging that the Respondents had engaged and were engaging in certain unfair labor practices violative of Section 8 (b) (2), 8 (b) (6) and 8 (b) (1) (A), and 8 (b) (1) (B) of the Act.

On October 28, 1949, following the usual proceedings, the Board issued its Decision in which, *inter alia*, it sustained certain of the 8 (b) (2) and 8 (b) (1) (B) allegations of the complaint, dismissed the entire 8 (b) (1) (A) and 8 (b) (6) allegations of the complaint, and issued an order consistent with its Decision.

Thereafter the case was considered by the United States Court of Appeals for the Seventh Circuit,² upon the Board's petition for enforcement and the ANPA's petition for review of the Board's Decision and Order. On December 27, 1951, the Court issued its decision,³ in which it sustained the Board's Decision and Order, with one exception: it held that the Board committed error in failing to "make findings and an appropriate order on the allegations of the complaint that the ITU and its agents had failed and refused to bargain collectively in good faith," because such refusal was alleged in the complaint to be a violation of Section 8 (b) (1) (A) rather than of 8 (b) (3). The Court specifically affirmed the Board's holding that, as a matter of law, a union's refusal to bargain does not come within the proscriptions of Section 8 (b) (1) (A). It ruled however, that as the complaint alleged an unlawful refusal to bargain by the Respondents which, if supported by the evidence, would constitute an unfair labor practice violative of Section 8 (b) (3), and as the Respondents recognized this to be one of the charges against them, the failure of the complaint to specify the correct subsection of the act that was violated did not justify the Board's dismissal of the allegations in question without considering the sufficiency of the proof. The Court therefore remanded the case to the Board for the purpose of considering and deciding the refusal to bargain charged in the complaint, on the merits.

On May 9, 1952, the ITU filed in the United States Supreme Court, a petition for *certiorari*, which sought among other things that tribunal's review of the above rulings of the Court of Appeals. On October 13, 1952, the United States Supreme Court denied this petition.⁴

¹ Herein referred to as the ITU

² 86 NLRB 951.

³ Referred to hereafter as the Court, or as the Court of Appeals.

⁴ *N. L. R. B. v. International Typographical Union et al*, 193 F. 2d 782, enforcing 86 NLRB 951, 86 NLRB 1041, 87 NLRB 1418.

⁵ 344 U. S. 816. On the same date, the United States Supreme Court granted *certiorari* on the ANPA's petition for review of so much of the Court of Appeals' decision as sustained the Board's dismissal of the 8 (b) (6) allegations of the complaint. 344 U. S. 812. On March 9, 1953, the Supreme Court affirmed this part of the Court of Appeals' decision. *American Newspaper Publishers' Association v. N. L. R. B.*, — U. S. —.

Therefore, pursuant to the Court's remand, the Board⁶ reviewed anew the record made at the hearing held before Trial Examiner Arthur Leff, for the purpose of determining whether the evidence there adduced will support a finding that the ITU has engaged in violations of Section 8 (b) (3) of the Act. The Board determined further that, as a matter of procedure, the exercise of its powers for purposes of determining the issues as directed by the Court should be accomplished in the manner provided for by Section 102.50 of the Board's Rules and Regulations, Series 6, as amended. Accordingly, the findings of fact, conclusions of law, and the order herein are issued in *proposed* form, so that the parties to these proceedings may have the opportunity to exercise the right to file exceptions (and briefs in support thereof) to these supplemental findings of fact, conclusions of law, and order.

The Board hereby grants to any party to the proceeding a period of twenty (20) days following issuance of the instant Proposed Supplemental Findings of Fact, Conclusions of Law and Order, for the purpose of filing exceptions thereto and supporting briefs, and to request permission to argue orally before the Board. The form of such exceptions and briefs as may be filed shall be in accordance with the provisions of Section 102.46 of the Board's Rules and Regulations, Series 6, as amended.

Upon the entire record in the case the Board makes the following :

Findings of fact

In enforcing the Board's decision in the *Chicago Newspaper Publishers Association, and Printing Industry of America*,⁷ cases, the Court has approved certain of the Board's findings and conclusions which are here controlling. Thus, the Court has approved our view that Section 8 (b) (3) proscribed the application against Employers, by unions having representative status, of the 1947 "ITU Collective Bargaining Policy"⁸ in the "Conditions of Employment" and 60-day [P-6A] contract forms which the ITU commanded its locals to use between August 22, 1957, and March 27, 1948.⁹ The Court also sustained the Board's conclusion that, under the intra-union scheme of the rules and regulations governing the relationship of the ITU to its subordinate locals, and establishing the assent of the individual union members to the relationship there disclosed, the ITU could be held responsible, under Section 8 (b) (3), for local representatives' applications of the 1947 ITU "Policy," even though no International agent participated physically in the negotiations being tested in any one case.

In enforcing the Board's decision in the instant case, the Court also approved the Board's finding that in its negotiations in the newspaper industry, the ITU had in fact applied the "Policy" in the "no-contract" and/or 60-day contract forms. This finding was based, in part, upon evidence of the negotiations in the following cities, which disclosed no deviation from the "no-contract" or "60-day contract" strategy mandated by the ITU "Policy": Chicago, Illinois; Albany, New York, Sioux City, Iowa; New Bedford, Massachusetts; Hammond, Indiana; and Detroit, Michigan. In some of these cities, as the enforced Board decision indicates, International representatives participated physically, together with local agents, in the conduct of the negotiations. In all, the International exercised substantial control over the bargaining relationship, whether or not its agents directly participated. As it has been held that the application of the "Policy" by labor organizations representing a majority of employees in appropriate units constitutes a violation of Section 8 (b) (3) of the Act, the sole remaining question is whether the record establishes that at the time the bargaining negotiations in the above-described cities occurred: (1) the employees on whose behalf the bargain was sought comprised a unit appropriate within the meaning of Section 9 (c) of the Act;¹⁰ and (2) whether a majority of such employees were members of the ITU or had otherwise established their designation of the ITU as their representative.

⁶ Members Peterson and Styles, who did not participate in the original decision, are also not participating here.

⁷ 86 NLRB 1041 87 NLRB 1418.

⁸ Hereinafter called the "Policy."

⁹ The initial date coincided with the effective date of the Act. The later date is that on which application of the "Policy" was stayed by the U. S. District Court's issuance of a temporary injunction, *Evans v. ITU*, 76 F. Supp. 881 (U. S. D. C. S. D. Ind.).

¹⁰ In *United Mine Workers of America, et al.*, 83 NLRB 916, we pointed out that appropriate unit findings are essential predicates to the disposition of 8 (b) (3) allegations.

Appropriate units

The record shows that the unit question, as such, was not separately and specifically treated by the parties except as to the Chicago phase of these proceedings. There, under a separate complaint, consolidated with the instant one for purposes of hearing only, the General Counsel sought the issuance of an affirmative bargaining order. However, the record does contain evidence as to the employee units for which the bargain was sought in each of the other aforementioned cities. As the record also establishes that all parties to the long-established bargaining relationship in these cities not only clearly understood the precise scope of the units for which they were bargaining, but also—with the possible exception of the inclusion of foremen—implicitly treated such units as appropriate and agreed that any “bargain” reached between them would cover such units, we are satisfied that we may properly resort to such evidence, in complying with the Court’s order of remand.¹¹

More specifically, the record shows that, with the exception of foremen, the units which formed the basis of the bargaining negotiations referred to herein, were composing room or mail room units of the kind the Board has usually found to be appropriate in the newspaper industry.¹² The scope of the unit bargained for in each case here under consideration had been established by a course of negotiations and agreements between the parties going back several years.

Accordingly we find that, subject to the statutory exclusion of foremen, the bargaining negotiations in the various cities here under consideration, covered the following units, each of which is appropriate for the purpose of collective bargaining within the meaning of Section 9 (c) of the Act:

Chicago, Illinois—The employee group comprising the appropriate unit in this case is the same as that heretofore found appropriate by the Board in the *Chicago Newspaper Publisher’s Association* case, 86 NLRB 1041, 1060, which the Court enforced in *N. L. R. B. v. Chicago Newspaper Publisher’s Association*, cited *supra*.

Detroit, Michigan—Two units are here found appropriate, both extending in scope to the Employer members of the *Detroit Newspaper Publisher’s Association*, who are, respectively, the publishers of the *Detroit News*, the *Detroit Free Press*, and the *Detroit Times*.

One unit is comprised of all “composing room” employees except foremen, in the work classifications covered by the November, 1946 to October, 1947 collective contract between the above publishers and Detroit Typographical Union No. 18, a subordinate local of the ITU, as ratified by the Respondent Woodruff Randolph for the ITU. The other unit is comprised of all “mail room” employees except foremen, in the work classifications covered by the November, 1946 to October, 1947 contract between the above-named publishers and Detroit Mailer’s Union No. 40, a subordinate local of the ITU, as ratified by the Respondent Woodruff Randolph for the ITU.

Albany, N. Y.—The unit is comprised of all “composing room” employees, except foremen, of the Employer (who are, respectively, the publishers of the *Albany Times Union* and the *Knickerbocker News*), in the work classifications covered by the November, 1946 to October, 1947 collective contract between such publishers and Albany Typographical Union No. 4, a subordinate local of the ITU, as ratified by Respondent Woodruff Randolph for the ITU.

Sioux City, Iowa—Two units of employees of the *Journal Tribune Publishing Co.*, herein called the Publisher, are here found appropriate: (1) a “composing room” unit of the employees of the Publisher, except foremen, in the work classifications covered by the January, 1947 to December, 1947 collective contract between the Publisher and Sioux City Typographical Union No. 180, a subordinate local of the ITU, as ratified by the Respondent Woodruff Randolph, for the ITU; and (2) “mail room” unit of the employees of the Publisher, except foremen, in the work classifications covered by the September, 1946 to September, 1947 collective contract between the Publisher and Sioux City Mailer’s Union No. 97, a subordinate local of the ITU, as approved by the Respondent Woodruff Randolph, for the ITU.

New Bedford, Massachusetts.—Two units of employees of the Publisher of the *New Bedford Standard Times* are here found appropriate: (1) a “composing

¹¹ Cf. *N. L. R. B. v. Somerville Buick Co.*, 194 F. 2d 56 (C. A. 1), enforcing 93 NLRB 1603.

¹² E. g. *Citizen’s News Co.*, 8 NLRB 997, 1005; *Lloyd Hollister, Inc.*, 68 NLRB 733; *Chicago Newspaper Publishers Association, et al.*, *supra*; *Cincinnati Daily Newspaper Association*, 55 NLRB 571; *Register Tribune Co.*, 60 NLRB 360; *Cincinnati Printers League*, 61 NLRB 595.

room" unit of the employees, except foremen, in the work classifications covered by that contract between the Publisher and New Bedford Typographical Union No. 276, a subordinate local of the ITU, which expired during or immediately before the conduct of the negotiations here considered; and (2) a "mail room" unit of all employees, except foremen, covered by that contract between the Publisher and New Bedford Mailer's Union No. 115, which expired during or immediately before the conduct of the negotiations here considered.

Hammond, Indiana—The unit is comprised of all "composing room" employees, except foremen of the Hammond Times Publishing Co., herein called the Publisher, in the work classifications covered by the agreement between the Publisher and Chicago Typographical Union No. 16, a subordinate Local of the ITU, which expired during or immediately before the conduct of the negotiations here considered.

Majority representation of the ITU

Proof of the majority status of the *Local Unions* respectively engaged in the negotiations for the employees in the units the Board has respectively found appropriate above, is supplied in all cases (except those involving the New Bedford negotiations) by stipulations entered into by the Respondent's counsel and the remaining parties to the case. These stipulations admitted that all the employees covered by the most recently effective contracts between the publishers respectively involved on the one hand, and the Local Unions respectively involved, on the other, were at all times here material members of the respective Local Unions involved. Proof of the majority status of the two Local Unions involved in the New Bedford, Massachusetts, negotiations is supplied by undisputed record facts, establishing that the most recent effective contract between the Publishers and the Local Unions respectively involved imposed, as did all of the other contracts, "closed shop" union membership requirements on the employees these contracts covered, as a condition of employment.

In view of the foregoing facts, the Board finds that at all times here material, a majority of employees in the respective units hereinabove found appropriate were members of the applicable Local Union. Because the record here establishes, as it did in other cases where we have considered 8 (b) (3) complaints involving the ITU, that the members of the subordinate ITU Locals here involved, and their negotiating agents, subscribed to and followed at all times here material, the bargaining procedures set forth in the ITU "laws" as amended at the 1947 ITU convention, we find, for reasons set forth in the Board's judicially enforced decision in the *Chicago Publishers* case, that the ITU was, at all times here material, a duly designated bargaining agent within the meaning of Section 9 (a) of the Act, of the employees in the units herein found appropriate.²²

We find, further, for reasons previously expressed that the adamant insistence of the union negotiators that any substantive terms agreed to in the course of the negotiations must be cast either in the "conditions" or "60-day" contract forms mandated by the ITU "Policy", constituted an unlawful refusal to bargain. We conclude therefore that the Respondents and each of them, on and after August 22, 1947, unlawfully failed and refused to bargain collectively in good faith with the above-named Employers or their bargaining agents, for the employees in the units herein found appropriate.

THE REMEDY

Selection of the appropriate remedy for the unfair labor practices found herein involves consideration of the General Counsel's request, made on the record during the litigation of the complaint, that no affirmative bargaining order be issued, but rather that a broad injunctive order be framed which would preclude the Respondents from in any manner unlawfully impeding the operations of the bargaining process in the newspaper industry. While we have found specific refusals to bargain with only 7 Employers, we believe the requested remedy to be appropriate here. For, as has been found: (1) the "Policy" was deliberately framed as a means of promoting union objectives in conflict with the provisions of Section 8 (b) (2) of the Act; (2) the "strategy" set forth in the "Policy" was peculiarly designed for use in the conduct of all collective bargaining negotiations with all employers whose employees were members of

²² Members Houston and Murdock, who dissented from this finding in the *Chicago Publishers* case (86 N. L. R. B. 1041, 1052), now consider themselves bound by that decision.

the ITU; (3) it was in fact repetitiously applied in various localities during the period here material, in violation of Section 8 (b) (3) of the Act, at times when the Respondent ITU's relationship to the Employers was that of a statutory representative of employees of newspaper publishers comprising a unit or units appropriate.¹⁴

From these facts, it is reasonably inferable that, unless effectively restrained, the Respondents will continue to attempt effectuation of their unlawful objectives, wherever they may participate directly or indirectly in the conduct of collective bargaining negotiations as the representatives of a majority of employees comprising appropriate units, and without regard to the obligations imposed upon statutory representatives by Section 8 (b) (3) of the Act. Accordingly, we believe and find that fully to effectuate the policies of the Act, the Board's order here, like that issued in the earlier decision, should be broad enough in scope to prevent the Respondent's commission of the unfair labor practices found throughout the newspaper industry. We shall therefore order the Respondents, as the statutory representative of employees in appropriate units, to cease and desist from refusing to bargain in good faith with any Employer in the newspaper industry.¹⁵

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the Labor Management Relations Act, the National Labor Relations Board hereby orders that:

1. Respondent International Typographical Union, and its officers, agents, and representatives, and

2. Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, their agents and successors, shall:

(a) Cease and desist from refusing specifically, or by insistence upon a 60-day cancellable contract, or by any other means, to bargain collectively with any Employer in the newspaper industry, where the employees of such employer comprise a unit appropriate for the purpose of collective bargaining, and a majority of such employees, have designated or selected the Respondent ITU to represent them for the purposes of collective bargaining.

(b) Take the following affirmative action, which the Board finds will effectuate the purposes of the Act. Post immediately in conspicuous places at all halls and offices of the Respondent ITU and its Locals, and all other places where notices to members are customarily posted, and publish in the Typographical Journal, official paper of the Respondent ITU, a copy of the notice attached hereto and marked Appendix A.¹⁶ These notices shall be signed by a duly authorized officer of the Respondent, ITU and by the individual Respondents herein or their successors in office, and shall remain so posted and maintained for a period of 60 days.

Signed at Washington, D. C.

PAUL M. HERZOG, *Chairman*,
ABE MURDOCK, *Member*,
JOHN M. HOUSTON, *Member*,
National Labor Relations Board.

¹⁴ Although the General Counsel adduced evidence of the detailed day-to-day conduct of negotiations in specific portions of the newspaper industry, the proceeding, as a whole, was aimed at curbing the application of the "Policy" throughout the newspaper industry. The details of specific sets of negotiations were spread upon the record on a "sample" basis to form a concrete picture of the "Policy" in operation and the deleterious effect of its application. To establish the uniform application of the "Policy" in all negotiations held in the newspaper industry, the General Counsel relied upon the testimony of Woodruff Randolph, noted in the Intermediate Report (86 NLRB 1006-1008), that with relatively few exceptions, the bargaining conducted by the ITU and/or its locals during the period between August 22, 1947 and March 27, 1948, was either conducted on the "no-contract" (Conditions of Employment) or "60-day contract" (P-6A) basis, or was consistent with the objectives thereof.

¹⁵ Cf. *N L R. B. v. United Mine Workers*, 31 LRRM 2353, decided February 10, 1953. (C A. 7), enforcing 96 N L R B. 1389.

¹⁶ In the event this Order is adopted by the Court of Appeals, there shall be inserted before the words "A DECISION AND ORDER", the words, "A DECREE OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT ADOPTING."

APPENDIX A

NOTICE

To All Officers, Representatives, Agents and Members of the International Typographical Union:

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT refuse, by specific refusal, or by insistence upon a 60-day cancellable contract, or by any other means, to bargain collectively with any Employer in the newspaper industry, where the employees of such Employer comprise a unit appropriate for the purposes of collective bargaining, and where a majority of such employees have designated or selected the Respondent ITU to represent them for the purposes of collective bargaining.

INTERNATIONAL TYPOGRAPHICAL UNION,
By WOODRUFF RANDOLPH, *President*.
ELMER BROWN.
LARRY TAYLOR.
DON HURD.

Dated _____

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by other materials.

[Please post]

POST CARD BULLETIN No. 148

NLRB DECISION ISSUED: INJUNCTION DISSOLVED

The NLRB has issued its long-awaited decision in the ANPA and Chicago cases. While finding conditions of employment and 60-day cancellation clauses illegal, the NLRB sustained the ITU's position on union laws, found that we had not "restrained and coerced employees," and held reproduction practices not illegal. Nothing in the decision affects our present practices and the Swygert injunction is automatically lifted. The Board did not rule on the legality of other contract clauses because of "the highly conflicting and delicate contentions of the parties as to their legality."

Ignore newspaper accounts of the NLRB decision. Gerard D. Reilly, counsel for the Inland Daily Press Association, found it "disappointing."

The Board order does not become final and binding until enforced by a circuit court of appeals or by the Supreme Court of the United States if appeal is taken to that Court.

As soon as the decision is fully studied, the executive council will issue a further statement. All necessary advice will be supplied.

MEMORANDUM ON PROPOSED AMENDMENT TO THE LABOR-MANAGEMENT RELATIONS ACT, 1947, SUBMITTED BY MAX DELSON, ATTORNEY, NEW YORK 17, N. Y.

I THE PROBLEM

To amend the Labor-Management Relations Act so that discriminatory practices by employers and by labor unions are declared unlawful.

II. TEXT OF THE PROPOSED AMENDMENT

A Bill To Amend the Labor-Management Relations Act, 1947, and for Other Purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the National Labor Relations Act, as amended, is hereby further amended as follows:

(a) Section 8 (a) of such Act is amended by adding a new subsection (6) as follows:

"(6) to deny to any person directly or indirectly employment or equal treatment with respect to terms, conditions or privileges of employment because of race, color, religion or national origin."

(b) Section 8 (b) of such Act is amended by adding a new subsection (7) as follows:

"(7) to deny directly or indirectly by ritualistic practice, constitutional or by-law prescription, by tacit agreement or otherwise membership in its organization to any person or persons by reason of his race, color, religion or national origin, or to limit, segregate or classify its membership because of race, color, religion or national origin, or to deny to any of its members by reason of race, religion, color or national origin, equal representation or equal treatment with all other members in any designation of members to any employer for employment, promotion, or dismissal by such employer."

III. POLICY CONSIDERATIONS

A. Purposes of the National Labor Relations Act, as amended

The suggested amendment falls within the policy and purposes of the act. To deny employment to persons, or to deny membership in a labor organization on account of race, color, religion, or national origin causes a diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce. Discrimination depresses the earnings of large segments of the population, lessening their buying power, reducing the sales for industry, which in turn result in fewer jobs and even lower purchasing power for the entire population. This tends to aggravate recurrent business depressions and impairs the interest of the public in the free flow of goods.

B. Expressed national policy

It has long been the policy of the Government to eliminate racial and religious discrimination from employment relations. Many Federal statutes and appropriation acts adopted by Congress, e. g., Selective Service Classification Act of 1940 (54 Stat. 1214), the Civilian Conservation Corps Act of 1937 (50 Stat. 320), the Lanham or Defense Housing Appropriation Act of 1941 (55 Stat. 363), the Nurses Training Act of 1933 (57 Stat. 153), forbid racial and religious discrimination, and the Supreme Court has held that such statutes embody "a national policy against racial discrimination." *Bob-Lo Excursion Co. v. Michigan* (333 U. S. 28, 68 S. Ct. 358 (1948)).

In addition to statutory enactments, Executive Order 9980, issued July 26, 1948, forbade discrimination in employment in Government agencies by reason of race, color, religion, or national origin (13 Fed. Reg. 4311 (1948)). Further, Executive Order 10308, issued December 3, 1951, provides for enforcement of nondiscriminatory clauses which must be made part of all Government contracts and subcontracts. Heads of Government agencies which enter into contracts are given general authority to take all steps necessary to achieve compliance (13 Fed. Reg. 12303 (1951)).

Discrimination by labor unions on the basis of race or color has been condemned by the Supreme Court of the United States in a series of cases beginning with *Steele v. Louisville and Nashville R. Co.* (323 U. S. 192, 65 S. Ct. 226 (1943)). See also *Brotherhood of Railroad Trainmen v. Howard* (343 U. S. 768, 72 S. Ct. 1022 (1952)); *Graham v. Brotherhood of Firemen* (338 U. S. 232, 70 S. Ct. 14 (1951)); *Brotherhood of Locomotive Firemen v. Mitchell* (190 F. 2d (5th Cir. 1951)).

The State courts have also stepped in to prevent abuses by labor organizations which discriminate on racial or religious grounds. In *James v. Marinship Corp.* (25 Cal. 2d 721, 155 P. 2d 329 (1944)), the court granted a preliminary injunction to restrain the defendant employer from discharging or causing the discharge of plaintiff and other Negro employees because they were not members of the labor union which had a closed-shop agreement with the employer, but which did not grant full membership privileges to Negroes.

In *Williams v. International Brotherhood of Boilermakers* (27 Cal. 2d 586, 165 P. 2d 903 (1946)), plaintiff brought an action to restrain defendants from interfering with their employment or reemployment because they were not members of certain local unions affiliated with the boilermakers union. The complaint alleged that plaintiffs were not allowed to become members of local unions but attempts were made to compel them to become members and pay dues to Negro lodges established under the authority of the international brotherhood as auxiliaries to the local unions. The purpose of setting up such auxiliaries was to segregate the Negro workers and the sole basis of such discrimination was the race or color of the plaintiffs. The Superior Court of California

held that it was clear that a State has the power to prohibit discrimination on account of race, creed, or color by any labor union with respect to membership in the union. Such discrimination was found to exist in the case before it and it reversed the court below which had dismissed the complaint. The court relied on *Railway Mail Association v. Corsi* (326 U. S. 88, 65 S. Ct. 1483 (1945)), wherein the Supreme Court of the United States stated that there was "no constitutional basis for the contention that a State cannot protect workers from exclusion solely on the basis of race or color or creed by an organization functioning under the protection of the State, which holds itself out to represent the general business needs of the employees."

In *Betts v. Easley* (161 Kan. 459, 169 P. 2d 831 (1946)), Negro carmen refused to join a separate lodge under the jurisdiction of the nearest white local, wherein their rights as union members would be severely curtailed, and brought an action to enjoin the Brotherhood of Railway Carmen from acting as their collective-bargaining agent until equal privileges and full membership rights were granted to them. The court stated "certainly the denial to a workman because of race, of an equal voice in determining issues so vital to his economic welfare, under the Railway Labor Act (ed., also under Labor-Management Relations Act, 1947), is an infringement of liberty, if, indeed, it may not also be said to be a deprivation of property rights." The practice condemned by the court, that is, the denial of equal rights and equal participation, were held to be violations of the Federal Constitution.

In carrying out its functions, the National Labor Relations Board has not recognized units based solely on sex, race, or creed. See *Matter of United States Bedding Company* (52 N. L. R. B. 382 (1943)). The Board has stated:

"This Board has been vigilant within the powers given it by Congress to see to it that certification under the National Labor Relations Act should not be made the vehicle of discriminatory racial practices by labor organizations. We have consistently refused to recognize the petition for representation if the petition proposed, either explicitly or implicitly, excluded Negroes from a bargaining unit on the basis of race. We have also refused to entertain petitions from joint bargaining representatives which did not admit locals composed of colored employees to the councils of the bargaining organization." *Matter of Larus & Brother Co., Inc.* (62 N. L. R. B. 1075, 107 (1945).)

However, the Board has allowed separate Negro locals to be established, and will certify such locals where it appears that equal representation will be provided to colored as well as to white locals. But even after certifying such segregated locals, "if it is later shown by appropriate motion that equal representation has been denied to any of the employees in the unit hereinafter found appropriate because of race, color, creed, or national origin, we will consider rescinding any certification which we may issue herein" *Atlanta Oak Flooring Co.* (62 N. L. R. B. 973 (1945)). See also *Veneer Products, Inc.* (81 N. L. R. B. 492 (1949)); *General Motors Corp.* (62 N. L. R. B. 427); *Wichita Foundry & Machine Co.* (69 N. L. R. B. 458 (1946).)

The Labor Management Relations Act presently contains provisions against discrimination in firing in section 8 (a) (3) in the following language:

"Provided further, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members,
* * *"

The problem of discrimination is thus recognized as one which is properly within the scope of the Labor Management Relations Act. See also section 8 (b) (2).

IV. CONCLUSION

The proposed amendment to the National Labor Relations Act, as amended, is therefore in accord with national policy as expressed by legislation, executive orders, the courts, both State and Federal, the National Labor Relations Board and the Labor Management Relations Act. It adds little which is new. It would make the discriminatory practices condemned by the courts an unfair labor practice, and it would modify present Board practice only to the extent that segregated locals will no longer be permitted, where race, color, religion, or national origin is the basis for such segregation. The Board has never permitted the certification of locals wherein limited membership only was offered on the basis of race, color, religion, or national origin.

The amendment would carry Board practice one step further and forbid separate locals thereby routing out at the outset the evils and denial of equal rights and privileges which are inherent in segregated and auxiliary locals.

No new bureaucracy is created by the amendment. No new agency is necessary to administer the execution of the amendment. No additional burden is placed upon employers and labor unions. No new adjustments will be necessary. Over the years, most employers and labor unions have become familiar with the procedure and functioning of the National Labor Relations Board. The Board has concerned itself with the problem of discrimination, the authors of the amendment to the National Labor Relations Act recognized in section 8 (a) (3) and section 8 (b) (2) that discrimination is contrary to the purposes and policies of the act and the amendment proposed will strengthen the hand of the National Labor Relations Board in dealing with problems in this area without creating any new or additional problems for employers or labor unions. The procedure outlined in the act is fair and has been tested by years of experience. A fair hearing and procedural due process is assured to all.

TEXTILE WORKERS UNION OF AMERICA,
Washington 4, D. C., May 12, 1953.

HON CARL ELLIOTT,
United States House of Representatives,
Washington 25, D. C.

DEAR MR. CONGRESSMAN: On March 30 when Mr. William Pollock, executive vice president of the Textile Workers Union of America, CIO, testified before the House Committee on Labor and Education, you asked Mr. Pollock to supply certain information regarding the impact of injunctions issued by State courts on activities of our union. It has taken us some time to accumulate this data, but we submit herewith a summary of some 27 injunctions issued in various parts of the country against the Textile Workers Union of America.

We have not attempted to describe the devastating effect which most of these injunctions had on the morale of the workers against whom these court orders were issued. Nor is it possible to do more than merely indicate the feelings of dismay and resentment created among a group of workers when the courts in effect brand participants in a normal strike as culprits subject to unusual and severe penalties.

A glance at the data will show that in almost every instance where an injunction is issued that a number of strikers were jailed for contempt of court on the grounds that they violated some section of the particular injunction. In several cases practically all of the workers involved in the strike were cited for contempt.

It has not been possible to obtain figures showing the amount of the fines levied against these workers when convicted of contempt of court; we know that the amounts were unusually large, both as to individual fines and in the aggregate. For instance, in Berryton, Ga., of the 14 workers adjudged in contempt 2 paid fines of \$100 each and were sentenced to 15 days in jail, while 12 paid \$100 and spent 10 days in jail. These are very heavy fines to cotton millworkers—or to any other factory worker.

Court costs and legal fees have been a real burden to the local unions and the international union in these many cases. In addition, it has been necessary in nearly all of these situations to raise money to support the families of men who were obliged to stay in jail for any length of time.

You will notice, of course, that the attitude of the courts in these cases mentioned here is very much the same irrespective of locality. In Philadelphia, Pa., a temporary injunction issued by the lower court, and later made permanent, was appealed to State supreme court, which upheld the issuance of the injunction. Although the employer claimed no violence occurred in this strike, nor were damages alleged in the bill of complaint, the courts assessed damages against the union in the amount of \$66,254.34.

We cite the instance in New Hampshire where an ex parte injunction issued the first day of the strike forbade all picketing. This injunction was not dissolved until a formal court hearing was held more than a week later.

In another case in Mississippi, briefly summarized, we mention that testimony brought out in the various actions arising out of an ex parte injunction handed down against strikers, showed that the county sheriff and local constable re-

ceived money from the employer and that truck drivers had been sent out to create incidents which would provide the basis for a stringent court order. In at least half a dozen other cases which occurred about the same time, the strike which occurred in the spring of 1951, the pattern was very much the same. The strikers were entirely peaceful until a truck driver or drivers, usually employed by another company, or from other localities deliberately rode down pickets peacefully patrolling plant gates. Within a matter of hours after these acts of provocation occurred, the local court issued injunctions drastically curtailing normal strike activities.

We know of at least one instance where the effect of the injunction was to forbid strikers from sitting on their own front porches. The mill houses were right next to the plant. According to the terms of the injunction strikers were forbidden to congregate near the mill. The local police ruled that strikers could not sit on each other's porches because this would literally violate the wording of the court order.

It is certainly not without significance that in one of these situations the judge that issued the injunction had formerly been counsel for the employer in the case and indeed the judge's son, also an attorney, appeared on behalf of the company.

We have cited in previous testimony before a Senate committee that in one city in Georgia an injunction was issued against the union on the Sunday before the Monday morning when the strike actually occurred. The basis for the issuance of the injunction was a radio speech by a union official urging that an orderly mass picket line be organized at the plant the first morning of the strike. It is customary in practically all strikes to have a mass picket line on the first morning.

We believe that the very brief summary we append herewith offers sufficient factual material to warrant a careful and thorough field study of the problem of State court injunctions by a competent committee of the Congress.

Very sincerely,

JOHN W. EDELMAN,
Washington Representative.

(The information referred to above follows:)

TEXTILE WORKERS UNION OF AMERICA, CIO,
Washington 4, D. C., May 12, 1953.

To: The Committee on Education and Labor.

From: The Textile Workers Union of America, CIO.

During the hearing on March 30 a question was raised regarding the tabulations on pages 12 and 13 of our brief. These tables were headed Representative Elections Lost and Won by TWUA in the South, 1942-52. We were asked to show in how many cases more than one election took place at a given plant. The answer is as follows:

A breakdown of the 410 elections involving TWUA during the 11-year period of 1942-52 (5½ years before and 5½ years after Taft-Hartley) shows that:

(a) The 410 elections were held at 357 plants:

Plants having 1 election each.....	308
Plants having 2 elections each.....	45
Plants having 3 elections each.....	4

(One hundred and two elections were held at the 49 plants where more than 1 election was held.)

(b) Of the 49 plants where more than 1 election was held:

1. All the elections at 14 of the plants occurred before Taft-Hartley:
 - (a) The final result at 9 plants was a won election.
 - (b) The final result at 5 plants was a lost election.
2. All the elections at 11 of the plants occurred after Taft-Hartley:
 - (a) The final result at 6 plants was a won election.
 - (b) The final result at 5 plants was a lost election.
3. At 24 of the plants the first election occurred before and the other elections after Taft-Hartley:
 - (a) The final result at 7 plants was a won election.
 - (b) The final result at 17 plants was a lost election.

Tabulating the results of the elections at these 49 plants by the nature of election results shows the following:

Plants where TWUA was involved in more than 1 election—1942-52

Nature of results	Total number plants	Plants where all elections held before Taft-Hartley	Plants where all elections held after Taft-Hartley	Plants where first election before and others after Taft-Hartley
2 elections lost.....	16	4	2	10
3 elections lost.....	4	1	—	3
1st election won and 2d lost.....	7	—	3	4
1st election lost and 2d won.....	20	9	5	6
2 elections won.....	2	—	1	1
Total.....	49	14	11	24

(c) Summarizing all the elections covered in the 11-year survey on the basis of this information on duplicate elections at individual plants shows the following:

1. TWUA won 206 elections at 204 plants with 7 of these reversed by later elections being lost (20 were reversals of previously lost elections); i. e., net or final victories, 199 elections at 197 plants (with 2 won at each of 2 plants).

2. TWUA lost 204 elections at 180 plants with 20 of these reversed by later elections being won (7 were reversals of previously won elections); i. e., net or final defeats: 184 elections at 160 plants (with 2 losses at each of 16 plants and 3 losses at each of 4 plants).

SURVEY OF INJUNCTIONS INVOLVING TWUA

1. *Athens Manufacturing Co., Athens, Ga.*—Strike began August 29, 1945, ended March 12, 1947. Restraining order issued approximately 3 weeks after strike; subsequently a preliminary injunction was granted; approximately 37 individuals were fined for contempt.

2. *Gaffney Manufacturing Co., Gaffney, S. C.*—Strike from August of 1945 to June of 1947; ex parte restraining order issued 3 months after strike; pickets limited to four at company gate, not permitted to speak; preliminary injunction granted.

3. *Exposition Cotton Mills, Atlanta, Ga.*—Strike began March 18, 1946; ex parte restraining order issued by State court about 2 weeks after strike began; preliminary injunction granted.

4. *Crompton-Highlands Co., Griffin, Ga.*—Strike began April 18, 1946; ex parte restraining order issued April 27, 1946; preliminary injunction granted; over 200 cited for contempt, 26 convicted, 11 went to jail, the rest paid fines.

5. *Safie Manufacturing Co., Rockingham, N. C.*—Strike began April 16, 1947; restraining order issued May 2, 1947, by Superior Court of Richmond County, in *Safie Mfg. Co. v. Bruce Arnold, et al.*, and amended on May 17 and May 27; 11 individuals cited for contempt and fined and jailed.

6. *Pec-Dee Manufacturing Co., Rockingham, N. C.*—Strike began June 2, 1947; Superior Court, Richmond County, in *Pec-Dee Mills, Inc. v. Rouse Baldwin, et al.*, issued ex parte restraining order on or about June 7, 1947; 23 individuals cited for contempt; on September 17, 1947, an additional ex parte restraining order was issued; thereafter a temporary injunction was granted.

7. *Mary Leila Cotton Mills, Greensboro, Ga.*—Strike began January 1941; ex parte restraining order issued by State court about 3 months later; 15 individuals cited for contempt.

8. *Union Manufacturing Co., Union Point, Ga.*—Strike began November 1942; ex parte restraining order issued 2 weeks later; six individuals cited for contempt.

9. *Walker County Hosiery Mills, La Fayette, Ga.*—Strike began October 31, 1946; State court issued ex parte restraining order within a week after the beginning of the strike; approximately 125 individuals were cited for contempt, most of them were fined.

10. *Albany Manufacturing Co., Albany, Ga.*—Strike began August 1949; ex parte restraining order was issued by State court 3 days after strike began; 25 individuals cited for contempt.

11. *American Enka Corp., Morristown, Tenn.*—Peaceful picketing for 6 weeks preceding injunction; ex parte injunction granted May 12, 1950, by Chancery Court, Morristown, Hamblen County, in *American Enka Corp. v. TWUA*, prohibiting the union from interfering with persons entering or leaving the plant; May 24, 2 injunctions granted, the first limited the number of pickets to 6, who had to be 10 feet apart, the second enjoined the strikers from congregating in groups of more than 2 at any point within one-fourth mile of the plant; strikers arrested for violation of injunctions.

12. *Anchor Rome Mills, Inc., Rome, Ga.*—Two days after strike called, and in absence of violence, on March 20, 1948, an injunction was granted by the Floyd superior court, civil division, in *Anchor Rome Mills v. TWUA*, limiting pickets to 3, 100 yards from the main gate and to remain at least 100 yards apart; March 31, company obtained injunction against picketing at railroad siding where strikers were beaten; April 4, temporary injunction made permanent; about 30 strikers cited for contempt, about 8 of those fined and jailed.

13. *Cedartown Textiles, Inc., Cedartown, Ga.*—Strike began February 20, 1951, March 15, ex parte restraining order issued by Polk superior court, Cedartown, in *Cedartown Textiles v. William*, enjoining the union from interfering in any manner with the company's business; amended ex parte restraining order issued March 16, limited picketing to 2 in number, not nearer than 20 feet from each other; 19 strikers arrested for violation of the injunction and held without bail. Judge Mundy, the judge who issued the injunction and punished strikers for contempt, was formerly counsel for the company; at the time of the strike, his son represented the company.

14. *Hart Cotton Mills, Tarboro, N. C.*—Strike called May 13, 1949; restraining order restricting picketing granted by judge in chambers, superior court, Edgecombe County, in *Hart Cotton Mills v. Abrams, et al.*, outside of county in which plant was located, and out of term of court; 74 workers cited for contempt for violating the order in the hour preceding their learning of its contents; 51 convicted and fined.

15. *Amazon Cotton Mills, Thomasville, N. C.*—Strike called June 2, 1947; ex parte restraining order issued on October 17, 1947, superior court, Davidson County, in *Amazon Cotton Mills v. TWUA*, limiting pickets to 10 in number; November 17, 1947, preliminary injunction granted; 50 to 60 cases of arrests, convictions, fines, and jail sentences.

16. *Celanese Corp of America, Rome, Ga.*—Strike August 14, 1948; ex parte restraining order granted by Judge Nichols, superior court, Floyd County, in *Celanese Corp of America v. Baldanzi, et al.*, limiting picketing to 2, on a public highway, 20 feet apart. Injunction granted on basis of call to picketing duty made by union leader the day before; 46 persons cited for contempt of the ex parte order, 21 found guilty by Judge Nichols, 13 convictions overturned on appeal; December 2, restraining order converted into temporary injunction; December 8, 1949, company dismissed the injunction and union moved to dismiss the convictions on the ground that civil contempt convictions fall with the end of the main case; Judge Nichols denied the motion; upheld by Supreme Court of Georgia (205 Ga 371, 392, 393, 499, and 514), which held that contempts were quasi-criminal, not civil, thereby overruling a decision it rendered a short time previously which held that such contempts were civil. In May of 1950, Judge Nichols as candidate for reelection, stated that prior to granting the injunction he received at his home workers who assured him that they did not want the strike.

17. *Crown Worsted Mills, Rochambeau Worsted Co., Sidney Blumenthal & Co., Bachman Wabridge Worsted Corp. Priscilla Worsted Mills, Colored Worsted Mill of Providence, Providence, R. I.*—Peaceful organizational picketing at each of the above listed plants in February 1951; ex parte restraining order issued against picketing at each of them; with regard to picketing at the Worcester Textile Co., an ex parte restraining order enjoining all picketing issued on February 26, 1951, by Superior Court of Providence, in *Grist, et al. v. TWUA*; action on all the other restraining orders delayed by TWUA until outcome of *Grist, et al. v. TWUA*, in which on March 2, 1951, a permanent injunction against all picketing was granted, and an appeal was taken; 5 months later, March 1951, the Supreme Court of Rhode Island held it was error to have enjoined all picketing, only mass picketing should have been enjoined.

18. *Wortex Mills, Inc., Philadelphia, Pa.*—Peaceful organizational picketing begun February 19, 1951; preliminary injunction entered March 15, 1951, prohibiting all picketing. January 7, 1952, Supreme Court of Pennsylvania affirmed the injunction (369 Pa 259); February 20, 1953, permanent injunction issued and

damages arising out of the picketing assessed against the union in the amount of \$66,254.34 by Court of Common Pleas, Philadelphia County, Pa., in *Wortex Mills, Inc. v. TWUA*, although the plaintiff did not allege damages in his bill of complaint and no violence of any sort was shown.

19. *Waumbec Dyeing & Finishing Co., Inc., Manchester, N. H.*—Peaceful recognition strike and picketing began September 26, 1952; same day, ex parte restraining order issued by Superior Court of New Hampshire, Hillsborough, S. S. in *Waumbec Dyeing & Finishing Co. and Waumbec Mills, Inc. v. TWUA*, prohibiting all picketing; October 2, 1952, after a hearing, ex parte injunction dissolved.

20. *A. D. Julliard & Co., Inc., Aragon Mills Division. Aragon, Ga.*—Strike called March 13, 1951; ex parte restraining order granted April 14, 1951, in *A. D. Julliard & Co., Inc. v. Johnson*, by Judge Mundy of Polk Superior Court, the same judge that sat in the Cedartown Textile injunction, limiting pickets to 2 in number, 20 feet apart; abusive and intimidating language and any acts of intimidation or coercion at any time or at any place was enjoined; 18 strikers arrested for violation of injunction; subsequent restraining order enjoined the use of tents, automobiles, or the public-address system for mass picketing.

21. *Industrial Cotton Mills Division of J. P. Stevens & Co., Rock Hill, S. C.*—Strike called April 1, 1952; although peaceful picketing, on July 21, Court of Common Pleas, County of York, in *Industrial Cotton Mills v. Berthiaume, et al.*, issued an ex parte restraining order limiting pickets to two at each gate; congregating anywhere at any time in such a manner as to menace or harass strike-breakers, enjoined.

22. *Huntsville Manufacturing Co., Huntsville, Ala.*—Strike began April 1, 1951; on first day of the strike, the Governor assigned 15 highway patrolmen to the plant gates, 12 withdrawn on the second day of the strike, because the situation was peaceful; ex parte restraining order issued April 28, 1951, out of Circuit Court of Madison County, Ala., in *Huntsville Mfg. Co. Inc. v. TWUA*, limiting the number of pickets to 4 and prohibiting the assembling of groups of more than 12.

23. *Erwin Mills, Inc., Stonewall, Miss.*—Strike began March 1, 1951, peaceful picketing preceding issuance of ex parte injunction on March 8, 1951, out of Chancery Court of Clarke County, Miss., in *Erwin Mills, Inc. v. TWUA*; pickets limited to 2 in number outside of each of the company's 2 gates; 2 strikers arrested for assault, but the grand jury refused to return an indictment; they were then charged in Justice of Peace Court, *State v. Aldridge* and *State v. Long*, where charge against Aldridge was dismissed and Long was acquitted. Testimony in the Long trial showed that the assaulted truck drivers were sent out to create an incident in order to obtain an injunction; sheriff and constable received pay from the company.

24. *Anniston Yarn Mills, Anniston, Ala.*—Strike began and peaceful picketing started May 7, 1951; ex parte injunction issued out of Circuit Court of Calhoun County, Ala., on May 14, 1951, limiting the number of pickets to 3 at each of the company's entrances; 5 strikers cited for contempt but not convicted.

25. *Cone Mills Corp., Dwight Division. Gadsden, Ala.*—Strike and peaceful picketing began April 1, 1951; ex parte injunction issued out of Circuit Court of Etowah County, Ala., on May 9, 1951, restraining the strikers from assembling in large groups around the company's property; on May 12, 1951, second ex parte injunction issued out of same court so as to include additional parties; May 12, 14, and 19, large number of strikers cited for contempt.

26. *Berryton Mills, Berryton, Ga.*—Strike began May 31, 1951; June 4, ex parte restraining order issued out of Superior Court of Chattooga County, in *Gammon, et al. v. Hammond, et al.*, prohibiting any picketing on the company's property, picketing allowed on the public highway by 2 pickets 50 feet apart, also restrained from visiting nonstrikers' homes early in the morning or late at night; on June 4, about 26 contempt citations filed; 14 adjudged in contempt on June 19, 1951; 2 union members paid fines of \$100 each, sentenced to 15 days in jail, remaining 12 paid fines of \$100 each and sentenced to 10 days in jail; vice president and general manager of Berryton Mills admitted in depositions that sheriff and deputies were paid by the company for their conduct in the strike.

27. *Rock Hill Printing & Finishing Co., Rock Hill, S. C.*—Strike started April 1, 1951; peaceful picketing preceding issuance of an ex parte restraining order on April 6, 1951, by Court of Common Pleas, York County, which limited the number of pickets to four at any of the company's gates, and prohibited disturbing the peace by shoutings, name-calling, or otherwise. Many arrests for violation of the injunction. Injunction dissolved by agreement between the parties.

MINNEAPOLIS, MINN., U. S. A.,

April 24, 1953.

HON. SAMUEL K. MCCONNELL, JR.,

*Chairman House Labor Committee,**House Office Building, Washington, D. C.*

DEAR SIR: It was my intention to appear and testify in the matter of the repeal or changes in the T-H law, but due to the time element and the fact that my testimony will to a great extent corroborate the testimony of others, I will limit my efforts to this letter.

1. The Wagner Act was an instrument imposed upon American industry by a one-sided or suppliant Congress, and contained provisions intended ultimately to destroy free enterprise and make it impossible to operate a legitimate business successfully. The Wagner Act was heavily weighted in favor of unionism, organized labor, not only to the great destruction of business and industry but to the disadvantage of the rank and file of labor as well. It was slanted, biased, and prejudiced. It also denied one class of our citizens the constitutional right to speak and to defend against the unlawful affrontery of Socialists and Communists then apparently in control of many of the unions' activities.

2. The Taft-Hartley law voided most of these unfair, un-American, unconstitutional discriminatory provisions of the Wagner Act. The T-H law released industry from the grip or stranglehold of labor unions and reinstituted the right of employers to promote business, industry and enjoy the liberty of free speech.

3. The T-H law is protecting the rights of the average workingman against abuse and misrule by union bosses. Under its provisions, a man is free from compulsory unionism, free to accept employment to work or not to work according to the laws of free society and our country and is liberated from the enslavement of both employer and union rule. In a sense the Taft-Hartley law is a book of rules; and providing any change is to be made, they should be limited entirely to the few suggestions of Senator Robert A. Taft with one exception.

4. The business of Congress does not contemplate enactment of laws which provide more favorable regulations to one class or group of citizens over that of another. All legislation should first and foremost take into consideration the public interest for that is paramount. The Government and its representatives have no moral nor legal right to act or do different than that of an umpire of a baseball game.

5. The Taft-Hartley law has stood the test of several years. It has been before the American electorate on two different occasions. It has withstood the most desperate attempts or challenges by the union bosses to have it repealed.

6. In two national elections it was sustained by an overwhelming majority of the people. The present Congress and the Republican Party were elected to power on the grounds that they would defend and protect the various provisions of the Taft-Hartley law, with some small changes. The Republican Party was not elected for the purpose of emasculating the provisions of the T-H law.

7. It must be apparent to anyone that the union bosses will never be satisfied. For the Republican Party to aid, abet, and give comfort to the group of persons or individuals that seek to destroy the T-H law is to invite disaster at the polls at the next election.

8. Because of the great danger to our country and the fundamental principles of our institutions, I, in common with many other businessmen, desire that the T-H law remain upon the statute books substantially as it is. Congress should give serious consideration to strengthening and giving more power to the States and local governments so that in the future national strikes and boycotts that have done such terrific harm to the public should be completely abolished or eliminated.

9. Strikes of the type that were called against United States Steel, and others, and coal strikes promoted by John L. Lewis are not the American way to deal with economic questions. In reality, they constitute insurrection or rebellion against organized government.

10. When a Federal bureaucratic government arrogates to itself the sole power of dealing with labor or industry or any other class or group of our citizens and completely ignores States rights, Congress has taken a serious and threatening step in the direction of destroying the Republic.

Respectfully submitted

MONITE WATERPROOF GLUE CO.,
H. L. PRESTHOLDT, *President.*

MEMORANDUM ON BEHALF OF NEON PRODUCTS, INC., LIMA, OHIO

Neon Products, Inc., Lima, Ohio, a manufacturer of neon signs sold and distributed in interstate commerce, has been a particular victim since 1945 of secondary boycotts which have continued on and been expanded on a more effective scale since the enactment of the secondary-boycott provisions of the Taft-Hartley Act. The International Brotherhood of Electrical Workers (A.F. of L.) refuses to erect the company's signs in various cities where employees of all sign-erecting companies are organized exclusively by the IBEW. The IBEW refuses to erect, handle, or otherwise work upon the company's signs because they are produced under a closed-shop contract with a CIO union and display a CIO label.

Effective relief under section 187 of the Taft-Hartley Act is not practically available because suits would have to be filed in many jurisdictions, requiring the entire resources of the management to compile the facts, prepare to testify, and investigate the tactics of each local union for the purpose of cross-examination, and otherwise vigorously prosecute such damage actions.

Under sections 158 (4) and 160 (e) of the Taft-Hartley Act, the company has had no relief because the National Labor Relations Board has been unsympathetic. (See exhibit A.¹) The decisions of the Labor Relations Board interpreting sections 187 and 158 (4) of the act, have held that mere refusal of the union to permit its members to work on a product made by an unrecognized union, does not come within the condemnation of the above statutes. Neither does the Board consider that a concerted refusal on the part of the employees to work on such products is illegal under those provisions of the act. They make this determination because the language of the statute defines secondary boycotts as unfair-labor practices where, inter alia, the labor organization or its agents induce or encourage the employees of any employer to engage in a concerted refusal to handle or work on any materials or perform any services in the course of their employment where the objective is to force or require any employees or other person to cease using or otherwise dealing in the products of any other producer.

The Board's interpretation of section 8 (b) (4) of the act has been affirmed in *Joliet Contractors Association, et al. v. N. L. R. B.* (31 LRRM 2361), decided February 10, 1953. (Circuit court for the 7th circuit.) In that case, the union adopted bylaws and working rules which refused to permit its members to work on a job where preglazed sash is used and designated certain contractors as unfair. Judge Major speaking for the court, said:

"We also agree with the Board that the mere refusal on the part of the union to permit its members to work on a job where preglazed sash is used, or a concerted refusal on the part of the employees to do so, *does not come within the condemnation of the statute.* This is so because the plain language limits the activities to 'employees * * * in the course of their employment.'" [Emphasis supplied.]

If this circuit court decision prevails, Neon Products, Inc. is as completely without relief as if sections 158 (4) and 187 of the act had not become law because there is never an employer-employee relationship involving the boycotted signs produced by Neon Products, Inc. There never is an employer-employee relationship within the interpretation of the Board and the Joliet Contractor case, supra, prior to their boycott by the IBEW for the reason that all of the signs of Neon Products, Inc. are hung by independent sign-erecting firms. Whenever all of the employees of sign-erecting firms in a city are organized exclusively by the IBEW (A. F. of L.), the sign-erecting firm will neither contract with, nor accept employment by, Neon Products, Inc. or its customers to erect the CIO-labeled signs produced with CIO labor under a union-shop contract.

In order to understand the success of the secondary boycott against our company, it is necessary to understand the history of the trade practice and union practice involved in the sale, distribution and erection of our products in various cities throughout the Nation, which will be described in the following paragraphs.

A very substantial portion of the factory output of Neon Products, Inc. is sold to national advertisers or manufacturers, processors, and producers of articles sold and distributed nationally. Neon Products, Inc. manufactures the signs pursuant to a contract of sale in which these purchasers furnish their own specifications and design. Neon Products, Inc. has no way of knowing definitely where the purchaser intends to have the signs installed because such purchasers furnish the shipping instructions to it after the signs are manufactured and are

¹ Exhibit A on file with committee

ready for delivery to the purchaser's distributors and/or dealers. It is not possible, therefore, for Neon Products, Inc. to tell with any degree of accuracy where the signs, which they agree to produce, are to be installed until such signs are manufactured, crated, and ready for shipment.

The controversy which causes secondary boycott against Neon Products, Inc. arises from the following facts:

1. Each sign manufactured by our client since 1938 has a CIO label displayed upon it. The employees of Neon Products, Inc. had an election pursuant to the National Labor Relations Act, and by an overwhelming majority, selected a CIO union to represent them as bargaining agent. Thereafter, the company entered into a closed-shop contract with its employees, members of the CIO union, and that contract, or renewals thereof with minor variations,² continues in full force and effect to the present date, all controversies between the company and the union have been amicably settled.

2 In 1945, and on an ever-expanding scale thereafter, the International Brotherhood of Electrical Workers (A. F. of L.) refused to install the signs manufactured by the company and bearing the CIO label. In various and sundry markets throughout the Nation, particularly in such large metropolitan cities as St. Louis, New York, New Orleans, San Francisco, Pittsburgh, Portland, Seattle, Cleveland, Chattanooga, Minneapolis, and St. Paul the IBEW refused to erect, handle, or otherwise work upon the CIO-labeled signs of our company unless Neon Products, Inc., promised the business agent of the local IBEW in each city respectively that no more of its signs, produced by CIO employees pursuant to the closed-shop contract with them, would be shipped to such area. Neon Products, Inc., had two alternatives: (1) It could comply with the ultimatum of the local IBEW, have the signs erected that were already in the particular city, and ship no more there, or (2) it could refuse to comply and store the signs in a warehouse in such city for return to the factory at a loss of thousands of dollars to the company.

For example, if Neon Products, Inc., was unsuccessful in the installation of the boycotted sign, each one of them had to be returned to the factory for dismantling, salvaging the materials which might be reprocessed, and scrapping the balance. As a necessary incident to this disposition of the boycotted signs, it is obvious that the factory had to reimburse its customers for the full purchase price, as well as standing the expense of shipping charges both ways, on all such signs dismantled and destroyed.

There was every good reason then for our company to avoid destructive losses by promising the local IBEW business agent that it would not ship any more of its CIO-labeled signs into the particular area in consideration for the installation of their boycotted signs already in the area. During the latter part of 1945 and 1946, there were so many cities in which the sign-erecting companies were organized by the IBEW exclusively that the company's business became more and more seriously impaired. This condition still exists in spite of the enactment of the Taft-Hartley law in 1947. It must be remembered that the company must be able to guarantee to its customers and potential customers that all of its signs can be erected in any market of the Nation in which the purchaser has dealers and where the signs purchased from the Neon Products Co. are to be erected. If Neon Products takes an order for a quantity of signs, the company must be able to ship the signs every place, and if they cannot be installed in all of these localities because of IBEW boycotts, then customers will not place orders with Neon Products if they cannot deliver and have the signs installed. Under these circumstances, it was difficult for the company to continue in business unless it violated the National Labor Relations Act by attempting to exert pressure upon its employees to change from one union to another in order for the company to solve its financial problems and its ability to do business in interstate commerce.

During the 1945-46 period, Mr. Kamin, president of Neon Products, Inc., tried to relieve this secondary boycott of the company's signs on a number of different fronts. He tried to get the assistance of the national organization of the CIO. He tried to get the cooperation of the international office of the IBEW, and he sought legislation and testified in the proceedings on the Case bill and on the Taft-Hartley Act. During all of this time, the secondary boycotts not only continued but expanded in more and more cities throughout the Nation. As a result, hundreds of thousands of dollars' worth of contracts for signs were

² Since Taft-Hartley became law, the contract was changed from a closed shop to a union shop.

canceled or new contracts for other signs were not placed by the same customers of Neon Products, Inc., who were satisfied with the workmanship and construction of the signs they had previously ordered. Their customers simply did not want to contract with Neon Products and have the same kind of distribution and erection difficulties that they had previously suffered.

Our company has positive proof that the international officers of the International Brotherhood of Electrical Workers instructed all of their locals to boycott the signs of Neon Products, Inc. A notice dated December 19, 1945, distributed to all inside local unions in the ninth district of the international union, contained the following quotation: "Our members may, and properly should, refuse to hang or connect such signs that do not carry the label of the IBEW. The international office has requested a legal opinion as to our right to refuse to handle signs that do not bear the label of the brotherhood and we have been assured it is the right of any IBEW members to refuse to work on such signs." This notice was attached to a letter from the business agent of the local IBEW union at Fresno, Calif., dated January 10, 1946. The local IBEW at Lima, Ohio, actively participated in the boycott on a national scale. It sent telegrams to business managers of local IBEW's throughout the Nation. A typical telegram from them read as follows: "Neon Products, Inc., notoriously unfair to the IBEW and A. F. of L."

During this period, Mr. Kamin also tried to solve his company's dilemma by conferences with the international officers of the IBEW. Mr. A. L. Wegener, then international vice president of the IBEW, stated that no CIO product, including signs, would be handled by A. F. of L. craftsmen, that the CIO-labeled product was equivalent to a non-union-shop product, that such signs erected by CIO union labor would be torn down or otherwise destroyed, and that attempts by CIO union workmen to do such work would probably cause physical violence and bloodshed in some localities. Mr. Wegener further indicated that the purpose of this technique of the IBEW was to force the signs of the company to be returned to the factory so that the CIO union employees in its plant would be coerced into accepting the IBEW local as its bargaining agent.

Mr. Kamin then sought the assistance of the United States Conciliation Service when hundreds of signs were in warehouses in various cities throughout the country as a result of the IBEW boycott. The only places he was successful in securing their aid was in Cleveland and San Francisco, and in both cities the results were the same as if Mr. Kamin had dealt with the union direct. The only difference is that the Commissioners of Conciliation, instead of the IBEW business agent, exacted the penalty of shipping no more signs to Cleveland and to the Pacific coast area (in the case of the conciliator at San Francisco), in consideration for hanging the boycotted signs already shipped there. In addition, Mr. Livingston, the United States Commissioner of Conciliation in San Francisco, wrote to the customers of Neon Products, Inc., and exacted from them an agreement not to purchase more signs without the IBEW label for delivery in the whole Pacific coast territory.

Failing in these several attempts to solve the problem with the CIO union's national officers, with the international officers of IBEW, and with the United States Conciliation Service, Mr. Kamin presented his case to Congress. You will note at pages 990 through 994 of the Congressional Record for February 6, 1946 (79th Cong., 2d sess.), an amendment to the Case bill and debate thereon. The only new facts in the debate on this amendment, which was adopted by the House of Representatives, are the confirmation of the fact that the National Labor Relations Board and the Labor Department had no jurisdiction and, therefore, intended to have nothing to do with the company's secondary-boycott problem.

Since the adoption of the Taft-Hartley Act, the company's products have continued to be successfully boycotted. It is believed that the company is blacklisted as the result of the experience described above between the company and the IBEW, their international officers and various locals, in the major markets of the United States. In each case since the adoption of the Taft-Hartley Act, the business agent tells the customer's distributor or dealer that his men refuse to work upon the signs of Neon Products, Inc. At present, the IBEW business agents pretend to have dropped their pre-Taft-Hartley aggressive attitude but claim that their members, of their own free will, refuse to erect, handle or otherwise work upon the signs made by the company. In each case which has arisen, such business agents have claimed that they have merely refused to instruct the members of their unions to work on the signs, as opposed to affirmatively instructing the men not to work on them. This presumes a pas-

sive attitude on the part of the IBEW officials. However, there is evidence in the files of Neon Products, Inc., which shows that at New Orleans the business agent for the IBEW locals affirmatively instructed the members of IBEW that they should not erect Neon Products' signs in New Orleans. (See exhibit B.³) It is the position of Neon Products, Inc., that it is the policy of the union officials rather than the individual attitudes of the members which is responsible for the refusal of the men to erect their signs.

As in the pre-Taft-Hartley period, the local business agents universally exact the penalty against the company that no further signs with a CIO label will be shipped into the territory as a condition precedent to instructing the IBEW members to erect the boycotted signs. In late 1952, at Cleveland, the company had to make a unilateral promise in writing to Mr. Clayton R. Lee, one of the business agents of the IBEW, following a conference between several of their business agents and Mr. Kamin, president of the company, in which such a penalty was exacted orally by the IBEW. The signs involved were two samples produced for the Gulf Oil Co. which were to be installed at Cleveland so the Gulf officials could determine whether a regular commercial order for a large quantity of the signs would be placed with Neon Products, Inc. Thousands of dollars' worth of business was jeopardized for a 3-month period because these sample signs were boycotted by the Cleveland local of the IBEW. In order for the company to participate in the Gulf order for several hundred signs to be delivered in all parts of the midwestern area of the United States, Mr. Kamin had to accept such penalty before the boycotted sample signs would be erected by the IBEW craftsmen. (See exhibit C.⁴)

The company, through its legal counsel, has tried to get the regional directors of the Labor Relations Board to prosecute the local IBEW unions in St. Louis and New Orleans, respectively. In both instances the regional directors refused to intercede or otherwise have anything to do with the secondary boycott.

The company was confronted with this situation: it could not continue in business with the secondary boycott operating successfully against them. It could not order, direct, or advise its employees to change to the IBEW union because such action would be a violation of the National Labor Relations Act, although such a changeover would have immediately solved its problem. Within a few months after the passage of the Taft-Hartley Act, both the National Labor Relations Board and the courts had shown that they were unsympathetic to enforcing the secondary-boycott provisions of the Taft-Hartley Act. Their interpretations were so unfavorable to relieving this burden by labor unions attempting to pirate each other's union that, for all practical purposes, the secondary-boycott provisions of the Taft-Hartley Act might well never have been enacted. Mr. Kamin had told the Senate Labor Committee (see hearings, Taft-Hartley Act) that unless there was legislation enacted to deal with the secondary-boycott problem effectively, his company would have to go out of business. Since the courts and the National Labor Relations Board took the attitude that they did, the company considered the continuation of its tremendous financial losses and the effect of the secondary boycotts on a national scale upon the ability of the company to continue in business. To stay in business and in order to serve its customers, its executives and stockholders decided to and did organize another corporation at Kokomo, Ind., under the corporate name of H & K Appliance Co. The employees there are IBEW (A. F. of L.) craftsmen and the signs produced there bear the IBEW label. Insofar as the Neon Products Co. can determine in advance, the quantity of signs which will eventually be installed in cities where sign-erecting companies are organized exclusively by the IBEW, it subcontracts its orders to the subsidiary company for production.

Since Neon Products divides its production with H & K Appliance Co., Neon Products, Inc.'s Lima plant has been operating at from 50 to 70 percent capacity since the boycott of its product commenced. Every sign contract sublet by the Neon company to the H & K Appliance Co. could have been handled at the Lima plant were it not for the secondary boycott. Yet, with this idle capacity at the Lima plant, it has had to invest \$200,000 in other facilities, which are yet inadequate to manufacture a great many signs for which it has had orders but cannot produce at the Lima plant because of the boycott. In addition, it has spent \$150,000 annually in duplicate operating and management expenses for the Kokomo plant. Obviously, the division of this business between 2 plants, where investment in 1 only is necessary, has enabled us to serve our customers and stay in business, but it is now causing us to operate at a loss at both plants since

³ Exhibit B on file with committee

⁴ Exhibit C on file with committee

the added overhead of running 2 plants for the same volume of business causes us to be out of line in a highly competitive field.

And finally, the decision of the court in *Jobet Contractors' v. N. L. R. B.*, supra, made the secondary-boycott provision of the Taft-Hartley Act nugatory so far as any relief to Neon Products, Inc., for the reason that IBEW technique in conducting a successful boycott of the signs of Neon Products, Inc., does not involve pulling laborers off the job. Inasmuch as Neon Products, Inc., believes that the court has, by its restrictive interpretation, failed to give the meaning intended by Congress, we should like your assistance and interest in amending the Taft-Hartley Act to encompass more specifically the type of boycott engaged in by the IBEW with regard to the signs produced by Neon Products, Inc. If you desire, we will be glad to submit amendments which we think would cover this type of situation.

STATEMENT BY THE NATIONAL AFFAIRS COMMITTEE, LEXINGTON, KY., CHAMBER OF COMMERCE

We, the national affairs committee of the Lexington, Ky., Chamber of Commerce, believe that the Taft-Hartley law is soundly conceived legislation in the public interest and in fairness to all segments of our economy.

We believe that the present law does not need to be changed. The reason for this is that the law has never been given a fair trial. The Congress of the United States should provide for mandatory application of the law in case of labor-management disputes.

We also suggest that the present members of the National Labor Relations Board be replaced with members that are fully aware of the intent of Congress. The selection and screening of members of this Board should be made by a special bipartisan committee of Congress upon the recommendation of the President of the United States and approved by Congress.

In the event that after a fair trial of the present bill has been made and if the new Board has carried out the intent of Congress to the best of its knowledge and belief, and there are still administrative difficulties with the bill, then we suggest the following:

1. Clarify the free-speech clause. The present law assures management of its right of free speech. As the present NLRB has construed the provision of the law, until now the employer has no more rights than he did under the Wagner Act.

2. Strengthen secondary boycott provisions. It is necessary to make the wording of this provision definite and positive.

3. The ban against economic strikers voting in union-representation elections should be retained.

It seems elementary that a union should represent only those working in the plant; not those who previously worked there and have been legitimately replaced.

4. No change is necessary in the present definition of supervisor.

5. Loss of pay occasioned by an unfair labor practice should be assessed only against the party found to be primarily responsible thereof.

6. Use of the injunctive process by the Department of Justice in emergency cases and by the NLRB in unfair labor practices should be continued.

7. Compulsory arbitration is not justified on the basis of experience to date.

8. Seizure of private property involved in a labor dispute is not justified.

9. Assure all people the right to work.

MEYERS & MATTHIAS,
Chicago, Ill., May 8, 1953.

In re proposed amendment to the Labor-Management Relations Act to exclude therefrom the general group of fire, casualty, and life-insurance agents, brokers, and solicitors.

Hon. SAMUEL K. McCONNELL, Jr.,
Chairman, Education and Labor Committee,
House of Representatives, Washington, D. C.

DEAR SIR: Please find attached a proposed amendment to the above act to exclude therefrom the general group of fire, casualty, and life-insurance producers, whether agents, brokers, or solicitors. This is done by excluding such producers from the term "employees" if meeting certain specified tests. Also

attached is a memorandum explaining the amendment with reasons why this is in the public interest.

We request that this amendment be presented to your committee and trust it will be found to have sufficient merit to warrant approval and enactment.

The hectic experience of the State farm companies and their agents in the State of California during the past year under the above act is the immediate occasion for this proposed amendment, but the basic reasons go far deeper.

The National Labor Relations Board on March 20, 1952, held *In The Matter of Golden State Agency and Insurance and Allied Workers Organizing Committee, C. I. O.*, that the automobile, fire, and life agents of the State farm insurance companies, of Bloomington, Ill., were independent contractors and hence not subject to the act (98 N. L. R. B. 119). Upon petition of the CIO the case was reopened for further hearings. The additional evidence was mainly cumulative and much of it in our judgment immaterial. The factual situation as respects relations with the agents remained unchanged. On December 31, 1952, the NLRB reversed itself and held (101 N. L. R. B. 247) that the agents were employees. We requested an oral hearing, attempted twice to file a reply brief in answer to the CIO brief and requested a rehearing, but all were denied. The Board ordered an election. A few weeks later the election was called off with the approval of the Board. As matters stand, a new election can be called at any time. Though we believe the decision to be erroneous, our counsel advise that we cannot appeal to the courts until after an election is held and decided adversely to the employer, and unless we refuse to bargain. Existing in a constant state of uncertainty is of course highly unsatisfactory, especially when convinced that the vast majority of our agents in California as well as elsewhere regard themselves as independent contractors, resent being classed as employees, and desire to be free from the act.

We offer this amendment because we believe from long experience, that insurance agents, brokers, and solicitors generally in all lines of insurance, share this viewpoint. We know of no group of agents, brokers, or solicitors who ever requested inclusion in the act or who desire to be represented by any labor organization. They have their own long-established associations well able to protect their interests in the industry. Such producers feel little economic pressure and are peculiarly independent for several reasons.

(1) The insurance industry is expanding so rapidly that abundant opportunity exists for the industrious. Insurance is a peculiar industry in that it can be expanded almost indefinitely. Americans are increasingly insurance minded.

(2) The producer who brings in the premium lifeblood of the business is on a pedestal, courted by all and dictated to by none. A good producer readily finds companies to represent.

(3) Since there is almost no end to the amount of insurance business available, he need never be unemployed while he is active.

(4) He can earn a substantial income if ambitious and controls his working time as he sees fit. He punches no clock unless it be his own. Generally speaking, he desires to remain free and independent and in fact resents any application of the above act to his operations.

Owing to the early closing of your hearings and to the difficulty of securing as of this date, the common action of the various groups concerned, we feel that this matter must be presented now.

We have already contacted large groups and will promptly submit the proposed amendment to the various important producers' organizations in order that objections, if any, may be registered with your committee. As this is a matter of interest to the entire industry, we would not press for the amendment in the face of serious opposition. Some may feel that due to the difference in factual situations, their members will not be classed as "employees" and hence may not actively seek legislative relief. Even so, the proposed amendment would merely strengthen their views and substitute definite legal provisions for problematical administrative decisions.

Thanking you for presenting the enclosed to the committee.

Very truly yours,

STATE FARM MUTUAL AUTOMOBILE INSURANCE Co.,
STATE FARM LIFE INSURANCE Co.,
STATE FARM FIRE AND CASUALTY Co.,
By MEYERS & MATTHIAS, General Counsel.
ERWIN A. MEYERS.

Suggested amendment to the Labor-Management Relations Act, 1947 (29 U. S. C. A., sec. 141 et seq.) to exclude the general class of insurance agents, brokers, and solicitors from the definition of the term "employee":

Amend title I, section 101 (3), 61 Statutes 137 (29 U. S. C. A., sec. 152 (3)), as amended June 23, 1947, to read as follows:

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, *or any person licensed as insurance agent, broker, or solicitor compensated principally and contingently on the volume of premiums or insurance produced or renewed without fixed salary or compensation therefor and retaining control of working time*, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to chapter 8 of title 45 and section 225 of title 28, or by any other person who is not an employer as herein defined."

EXPLANATION OF PROPOSED AMENDMENT AND REASONS WHY IT SHOULD BE ADOPTED

The appended amendment provides by the italicized new language, that the term "employee" as used in the Labor-Management Relations Act, shall not include: *"or any person licensed as insurance agent, broker, or solicitor compensated principally and contingently on the volume of premiums or insurance produced or renewed without fixed salary or compensation therefor and retaining control of working time."*

EXPLANATION OF AMENDMENT

Producers in the insurance industry fall into three general classes: Agents, who directly represent insurance companies, brokers, who represent the insurance buying public; and solicitors, who are subagents of an agent or broker. Unless all are treated alike, one class may enjoy an unfair competitive advantage over the others. The broker apparently is not subject to the act while the others may or may not be. It seems logical that among producers in a competitive market, there should be equality and not discrimination. This amendment applies the same tests to all and removes possible present discrimination.

The amendment applies those basic, practical tests which fairly distinguish the independent contractor from the employee: (1) Contingency of compensation; (2) absence of fixed salary or compensation for production, and (3) retention of control of his working time.

The independent contractor, unlike the employee, regards himself as an entrepreneur. He is the master of his own fate and determines his own net income. His compensation is based principally on his production. This may be measured by volume of premiums produced or the amount of insurance produced. Most companies compensate on a percentage of the premiums paid. Some pay on the amount or number of units of insurance produced. The amendment recognizes both methods of computation. The compensation of the producer in either case is contingent on what he produces or renews thereof. Renewals should be included since in life insurance and some other lines the compensation to a producer is frequently if not generally based not alone on the original sale or premium but on the renewals of such business. This situation is true to some extent in the casualty business and slightly in the fire business, but as a general rule in such lines the policy upon expiration is reissued so that, strictly speaking, there is no renewal commission. The amendment is so drawn as to accommodate both situations.

The amendment provides that the compensation must be "principally" derived from the producing or renewing of insurance. This is because the total income or allowances of a producer may not arise solely from such production or renewals although closely related thereto. He may receive awards or prizes, have expenses paid in attending conventions and meetings of his company, receive postage allowances, advertising or advertising matter, desk space, stenographic or secretarial service, telephone service, contingent commission for favorable loss ratios, pension benefits, and perhaps other items.

All of these items of additional income collectively will in nearly all instances constitute but a small fraction of his total or even basic commission income. Since we are unable to determine the exact percentages in the various classes of insurance and plans of operation, we make use of the term "principally." It is a fair test and is readily workable.

The independent contractor in the insurance business as elsewhere enjoys as a net return for his services the difference between what he contingently earns and his expense of doing business. Unlike the employee, he has no guaranteed or fixed net income. Since by definition his income is contingent on production results, he should have no fixed salary or compensation for producing insurance. Hence this limitation.

The remaining essential characteristic of the independent contractor is that he retains control over the use of his time. While he must follow the underwriting rules, instructions and forms of his company in producing business, yet he does this when and in such order as he sees fit. He has no fixed hours or days of service unless he prescribes them for himself. Here again he differs radically from the employee.

A producer of insurance who satisfies these basic tests is in fact an independent contractor and is so recognized in the insurance industry. It is not difficult to apply these tests whereas some of the usual common law tests create much confusion. There may be some borderline cases but they are not difficult of solution. For example, a solicitor who works for an agent or broker may receive a salary for doing certain clerical work during certain hours such as keeping records, but with the rest of his time free to sell insurance on a contingent commission basis. In that case he is an employee as to the clerical work but under the amendment would be an independent contractor as respects the selling of insurance since he satisfies the tests. The same would be true as to an individual having outside employment but who sells insurance for commission during spare hours on a part time basis. So far as insurance production is concerned, he would likewise be an independent contractor.

It will be noted that this amendment eliminates reference to other common-law tests. This is for two reasons: First, because most of them have little valid or necessary application to the insurance production business; and second, they are so vague and indefinite as to lead to hopeless confusion, extensive litigation, and expense in the various separate factual situations in the insurance business. The purpose of the amendment is to put an end to the present confusion which arises mainly because the act contains no definite tests for determining the status of insurance producers.

REASONS WHY THE PROPOSED AMENDMENT SHOULD BE ADOPTED

(1) The proposed amendment merely makes a second and more specific attempt to do what Congress apparently intended to accomplish by its amendment of June 23, 1947, to this same section, when it added the specific exclusion of "independent contractors" from the provisions of the act.

The insurance industry so understood this intent from House Report No. 245, 80th Congress, page 18, the material portion of which reads as follows:

"An 'employee,' according to all standard dictionaries, according to the law as the courts have stated it, and according to the understanding of almost everyone, with the exception of members of the National Labor Relations Board, means someone who works for another for hire. But in the case of *National Labor Relations Board v. Hearst Publications, Inc.* (322 U. S. 111 (1944) (8 Labor Cases, pp. 51, 179)), the Board expanded the definition of the term 'employee' beyond anything that it ever had included before, and the Supreme Court, relying upon the theoretic 'expertness' of the Board, upheld the Board. In this case the Board held independent merchants who bought newspapers from the publisher and hired people to sell them to be 'employees.' The people the merchants hired to sell the papers were 'employees' of the merchants, but holding the merchants to be 'employees' of the publisher of the papers was most far reaching. It must be presumed that when Congress passed the Labor Act, it intended words it used to have the meanings that they had when Congress passed the act, not new meanings that, 9 years later, the Labor Board might think up. In the law, there always has been a difference and a big difference, between 'employees' and 'independent contractors.' 'Employees' work for wages or salaries under direct supervision. 'Independent contractors' undertake to do a job for a price, decide how the work will be done, usually hire others to do the work, and depend for their income not upon wages, but upon the difference between what they pay for

goods, materials, and labor and what they receive for the end result, that is, upon profits. It is inconceivable that Congress, when it passed the act, authorized the Board to give to every word in the act whatever meaning it wished. On the contrary, Congress intended then, and it intends now, that the Board give to words not far-fetched meanings but ordinary meanings. To correct what the Board has done, and what the Supreme Court, putting misplaced reliance upon the Board's expertness, has approved, the bill excludes 'independent contractors' from the definition of 'employee'."

It now appears from the amended decision of the National Labor Relations Board in the *Matter of Golden State Agency and Insurance and Allied Workers Organizing Committee, C. I. O.* (as reported in 101 N. L. R. B. 247 (reversing 98 N. L. R. B. 119)), that automobile, fire, and life insurance agents are employees and not independent contractors.

This again injects into the picture all of the confusion and uncertainty which existed prior to the amendment of June 23, 1947. Hence this second attempt to clear the air.

The proposed amendment will put an end to the present confusion which results from lack of definite and specific tests to determine whether an insurance producer is an employee or an independent contractor. The common law tests of the terms "employee" and "independent contractors" as used in the act are so vague, indefinite, and overlapping in many factual situations as to make it virtually impossible to determine with certainty how any particular group of producers will be classified by the NLRB. Unfortunately, reasonable men may reach different conclusions under the same facts or indeed different conclusions at different times under substantially the same facts and conditions.

(2) So far as we can determine, none of the important associations of producers requested inclusion under the act. Most groups apparently assumed as stated in (1) above, that their members were excluded as independent contractors and some may still be of that view. Whether or not the NLRB will so hold is a matter of opinion and not certain. In view of this background, it appears reasonable that they should be excluded when meeting the tests of the amendment, and not be forced to litigate group by group and State by State with the confusion and uncertainty which must follow. The producers, their companies, and also the Government should be spared the expense unless these groups now indicate a desire to be included under the act.

It is doubtful whether any important producers organization of agents, brokers, or others desires to step aside and entrust bargaining in any respect, commission or otherwise, to any labor organization. There is no evidence in this direction except only in the case of industrial life insurance agents, a very special class, who are mainly collectors of weekly and monthly premiums, have fixed hours of employment and are really employees in fact. They would be classed as employees under the proposed amendment as would strictly salaried producers.

(3) There is no economic exploitation in the field of insurance production which makes inclusion of producers in the present act necessary or desirable. Insurance producers as a class are peculiarly independent for several reasons:

(a) The insurance industry is expanding so rapidly that abundant opportunity exists for the industrious. Insurance is a peculiar industry in that it can be extended almost indefinitely. Americans are increasingly insurance minded.

(b) The producer who brings in the premium lifeblood of the business is on a pedestal, courted by all and dictated to by none. A good producer readily finds companies to represent.

(c) Since there is almost no end to the amount of insurance business available, he can always while active, earn a substantial income if ambitious.

(d) He controls his working time as he sees fit. He punches no clock unless it be his own. Generally speaking, he desires to remain free and independent and in fact resents any application of the above act to his operations.

(4) The present law will work unequally in the industry and upset and minimize prevailing competitive conditions. Agents classed by the NLRB as employees and organized, may well price themselves out of the market by increase in compensation forcing increased premiums, while other agents in the same competitive field classed as independent contractors and not so handicapped, may enjoy a competitive field day. Brokers representing the public, unregulated, and operating in the same competitive field would presumably have the same advantage. It seems reasonable that all producers in the same competitive field should be subject to the same tests, which this amendment provides.

(5) Practical administration of the present law as applied to insurance producers presents various difficulties. For instance, it is uncertain how the law

would be applied in the case of incorporated insurance agencies or brokerage firms which operate in various States. They are not individuals. Would such firms be regulated or unregulated by the law? If not, further inequality in the industry would result.

The same agent frequently represents several companies. He might be an employee as to some and not as to others, although directly competitive in the same field. He might have several employers at the same time. The situation of such an agent would be confusing to say the least.

The broker represents the public. How would the NLRB proceed as respects his employers? Against whom would he strike?

The amendment obviates these administrative difficulties.

(6) As the law stands, there is likely to be conflict between Federal and State jurisdictions. Every State in the Union has laws governing the licensing, activities, and practices of agents. Many States also similarly license and regulate brokers and solicitors. The laws are also binding upon insurance companies. What is an insurance company to do if conditions of employment imposed upon it through bargaining conflict with such State laws? Which law is supreme? Does the Federal law amount to pro tanto repeal of State regulatory laws; and if so, may a labor organization or the NLRB in effect replace the State legislatures?

In much the same way the various State laws regulate insurance rates which may be charged the public.

In the life-insurance business, section 213 of the Insurance Laws of New York fixes the maximum amount of commission or acquisition expense which may be included in the rate charged the public. Life insurance companies operating in New York must observe these limitations in all other States where they operate.

In the fire and casualty insurance business the State insurance commissioner or superintendent of insurance of nearly all States has control over the rate which may be charged the public. There is a certain permissible expense allowance which includes commissions in each rate.

What happens if the business acquisition allowance forced upon an insurance company through bargaining exceeds the legal maximum? The same questions of conflict arise in the fire, casualty, and life-insurance business.

Practically all of these conflicts will be eliminated by the proposed amendment.

(7) The present law discourages pension and retirement plans set up by various companies for their producers. This is for the reason that pensions connote an employee-employer relationship. A company naturally hesitates to set up a plan which may have the legal effect under present law of converting its producers from independent contractors to employees. Similarly the producers should not be required to relinquish their independent contractor status in order to enjoy the benefits of a pension plan which their company or companies wish to provide. The proposed amendment makes such plans possible without any change in the status of the producer.

STATEMENT SUBMITTED BY ROY A. CHENEY, PRESIDENT, UNDERWEAR INSTITUTE,
2 PARK AVENUE, NEW YORK, N. Y.

This brief is submitted on behalf of the Underwear Institute—an unincorporated organization of underwear manufacturers representing over 80 percent of the total industry production.

Our industry is one of the oldest in the country and has been vitally involved in the labor movement since its beginning. We recognize that the union movement is more than a fight for higher wages—that it is seeking for the feeling of importance and identity lost in our ever-industrializing society. We admit that at one time there existed a sympathetic feeling between labor and management that is not present today, and hope that the collective-bargaining process can be the means of restoring it. Consequently, we are strongly in favor of all amendments which will advance the collective-bargaining process correctly and opposed to all those which will hinder it.

We feel that the need for Government intervention in behalf of the labor union has passed and that better results could be obtained by restoring the parties to equal positions in the eyes of the law. Above all, we believe that the law should return to a position favoring closer relationships between the worker and manager and identifying its administration with local needs and desires. To effect these ends, we present the following recommendations:

I. FREE SPEECH

The Wagner Act and its interpretations had seriously curtailed management's right of free speech. Feeling safe in the interpretations of the National Labor Relations Board, unions issued many misstatements and statements deliberately calculated to create misunderstanding between the employees and management. Because employers no longer felt safe in conversing with their employees on any topic even remotely concerning unionization, such statements had to go unchallenged. This effected a serious decrease in the quality of labor-management relationship, the very opposite result to the published purpose of the act.

Recognition of the damage being done was noted in the Labor-Management Relations Act, which provided in section 8 (c) of title 1:

"The expressing of any views, arguments, or opinions or the dissemination thereof, whether in written or printed, graphic, or visual form, shall not constitute or be evidence of unfair labor practice under any of the provisions of this act, if such expression contains no threat of reprisal or force or promise of benefit."

Unfortunately, the National Labor Relations Board has construed this section to extend only to unfair labor practices and has continued to interpret free speech in representation cases, as it did under the Wagner Act. Further, the Board ruled that the employer could not address his employees on company time concerning union matters, without giving the union equal time—on company time and at company expense—to reply. (*Bonwit-Teller* case (96 NLRB No. 73).)

As the law stands at present, a serious encroachment is being made—not only on the freedom of speech of the employer—far more important, on the freedom of the employee to receive a variety of political, economic, and religious opinions.

Because of this a gulf of misunderstanding exists between the very groups which must cooperate to insure full productivity and prosperity for our country.

It is clear that legislative action is the only means available to restore full freedom of communication. The law should be amended to make section 8 (c) applicable to representation cases, as well as unfair labor practices, and to clarify the section so that it does not allow any Government agency the authority to direct an employer in the utilization of his own property.

It is recommended that section 8 (c) be amended to make it applicable to representation as well as unfair labor practice cases and to insure to employers free utilization of their own property.

II. COMPULSORY UNIONISM

One of the basic tenets of the teachings of our country's founders was that each man was to be treated as an individual in himself. It was to protect this conception of man that the Bill of Rights was framed. Thereby the individual was insured freedom of speech, assembly, and religion. In later times, to protect the individual's freedom of speech and assembly, numerous restraints were placed on the power of employers to coerce and intimidate employees who sought to join unions. It was believed more important to our society that the latter freedom be restricted in order that the former be exercised.

In these early days of unionization it was held necessary to the success of collective bargaining to extend additional aids to the young unions in order to help them overcome the carried-over fear of what the employer might still be able to do. Thus, the closed-shop provision was inserted in the Wagner Act to foster the union movement and counteract the remaining fear held by employees. This provision was carried in modified form into the Taft-Hartley Act in the form of a union-security clause. In so doing, Congress recognized that it was encroaching upon one very serious freedom—the freedom of religion. It was encroaching here because many would-be employees were denied work due to the fact that their religion denied their joining a union. One of our mills has complained of just this inequity, and an excerpt of their letter is attached as appendix A.

It is submitted that, whereas this might have been justified in the past, the justification no longer exists. Unions can stand on their own feet. Employees are protected in their right to organize against interference by management. Consequently, any provision which in any way restrains so basic an American freedom, as the freedom of religion, should be abolished.

The severe restrictions imposed by these provisions and their general unpopularity even among the working force, are shown by the demands of the union to have the terminology changed. Any change in language can change the grossly unequal advantage that such clauses extend to the unions. Any change in language can remove the justifiable antagonism on the part of independent individ-

nals who do not feel the need nor see the value of union representation. There is absolutely no reason why unions, the same as any other business organization, should not gain and keep its membership because of its value and service to them, rather than by Government fiat.

It is recommended that the union shop, and every other form of compulsory unionism, is an encroachment upon basic American liberties, and should be abolished.

III. STATE "RIGHT TO WORK" LAWS

The law now provides that any State that prohibits compulsory union shop, should be exempt from the union-shop proviso of the Taft-Hartley law. Proposals have been made to eliminate this exemption from the law.

It is submitted that the right to insure the right to work of all of the citizens within its boundaries, is one of the basic State's rights, and that this exemption should be retained in the present law. The decision on this matter by the peoples of each individual State, as reflected by their legislation on this subject, should be given complete sanction by Congress.

It is recommended that State laws prohibiting compulsory unionism be given full scope to operate, despite the provisions of any Federal law.

IV. WELFARE AND HEALTH FUNDS

"Fringe benefits" have taken on increasing importance. Today, welfare funds represent millions of dollars of employment investment, a share of which accrues to the benefit of each individual worker covered. In the past, these funds were jointly administered, but it is now proposed to provide a procedure whereby the unions alone could control them.

Any decision to establish this procedure would have three distinct disadvantages:

1. The proposed requirement that the Secretary of Labor review and approve each plan prior to turning it over to the exclusive control of the union, would add further burdens to an already overburdened department. This Department could better apply its time to an investigation of the existing inequalities arising under the administration of such plans. One of our mills (in a letter, an excerpt of which is attached at appendix B), has testified to conditions of tax evasion and discrimination practices by the union with impunity. Such practices teach disrespect for Government and lower the morale of the workers discriminated against.

2. Such procedure would place too great a temptation in the path of the unions. As mentioned before, these funds amount to millions of dollars. To place such sums at the sole disposition of the union officials, would be to unnecessarily risk the future security of thousands of workers. While it may be argued that management need not give up its representation, it is clear that the pressures exerted at the bargaining table, would quickly force it to do so. The sole administration of such funds would immediately be first on the list of objectives for every union.

3. Such procedure would deny representation in the administration of these funds to all nonunion employees. Further, the union could use its power to discriminate against and coerce them.

The Labor-Management Relations Act is designed to protect the workers. Certainly, no amendment should be adopted that would have the opposite effect on a sizable proportion of their number.

It is recommended that no amendment be adopted that will allow sole jurisdiction over welfare or health funds to reside in the union.

It is further recommended that this body consider amendments that would effect more equitable administration of these funds.

V. INDUSTRYWIDE STRIKES AND BARGAINING

One of the most firmly established rules of the antitrust laws is that no individuals may agree to control the price or production of any goods or commodity. However, indirectly, the unions are forcing them to do just this in many instances. Whenever a union insists on areawide or industrywide bargaining, it is forcing employers to agree to fix the price of the highest single cost item in their manufacturing costs. This is tantamount to fixing prices. In some instances, unions have demanded a voice in the pricing determinations of individual companies. Feeling safe behind their immunization from the antitrust laws, the unions are in a perfect position to accomplish indirectly the thing that Congress has repeatedly said management cannot do.

It is important to realize the effect that industrywide bargaining could have on the economy. Unions have shown no compunction at striking during times of great national emergency, and their officials avoid—wherever possible—responsibility for community damage caused by their organizations. To allow any private organization the power to stop the work of one whole industry, would be to risk possible national disaster because there would be no adequate recourse against ill-advised and illegal action, and the action would be taken on a national scale.

Different regions reflect different economic conditions and to allow unions to impose uniform terms and wage scale would be grossly unfair. Industrywide contracts would fail to take into account different living costs and conditions, and would eliminate the localized, individual nature of the bargaining process. This would further separate labor and management and would be detrimental to labor relations.

It is proposed that the Labor-Management Relations Act be amended to prohibit industrywide strikes. At the very least, this should be done. However, it would seem more advisable to strike the problem at the source of the trouble. If unions are allowed to compel bargaining on an industrywide or nationwide basis, few prohibitions against industrywide strikes would be effective. It has proved difficult in the past to fix responsibility for union action (300,000 coal miners struck and the courts were unable to rule that any union official was responsible). Also, after great national damage had been caused, it would be too late to take action against irresponsible officials. This type bargaining is no more necessary to the unions than the power to fix prices is to management. It should be denied.

It is recommended that industrywide bargaining be prohibited.

CONCLUSIONS

I It is recommended that section 8 (c) be amended to make it applicable to representation, as well as unfair labor practice cases, and to insure to employers free utilization of their own property.

II It is recommended that the union shop, and every other form of compulsory unionism, is an encroachment upon basic American liberties, and should be abolished.

III. It is recommended that State laws prohibiting compulsory unionism be given full scope to operate despite the provisions of any Federal law.

IV. It is recommended that no amendment be adopted that will allow sole jurisdiction over welfare or health funds to reside in the union.

It is further recommended that this body consider amendments that would effect more equitable administration of their funds.

V It is recommended that industrywide bargaining be prohibited.

APPENDIX A

"There is, however, one feature of the union shop which is definitely unfair in that no provision is made for those individuals who cannot join a union because of religious convictions. Some provision should be made whereby the religious objectors would not be deprived of an opportunity to work when it can be definitely established that they were not just looking for a free ride. This objection could be met by requiring religious objectors to pay an amount equivalent to union membership fees and dues into a fund to be used for some charitable purpose.

"I understand that some unions have agreed to such an arrangement while others have steadfastly refused. The right to religious freedom has a rather hollow sound if such right is granted at the expense of right to work."

APPENDIX B

"Under the terms of our agreement, we cannot declare a vacation for our employees, even though we have paid vacations. Now, due to the fact that this vacation is paid into a health and welfare fund, there is no money withheld for tax purposes, and, by the same token, when the union pays this vacation out to the employees, they do not withhold taxes either, and, in that way, they dodge the entire responsibility of their tax burdens, and, in our opinion, this is discriminatory against the nonunion employees, or employees such as office help, foremen, or any supervisory help which is not in the bargaining unit. Also, it has been ruled in the State of Pennsylvania that because of the method that has

been applied, when we declare a vacation of this nature, the union then orders all union people on unemployment compensation at the same time. It this way discrimination then starts again by the fact that the union employee has a paid vacation and draws unemployment compensation at the same time. This is discrimination against the nonunion office employee and any other members not in the bargaining unit "

STATEMENT OF WILLIAM J. DURING IN BEHALF OF THE MANUFACTURERS
ASSOCIATION OF SYRACUSE, ONONDAGA COUNTY, N. Y.

The Manufacturers Association of Syracuse is a completely local organization, serving manufacturing industry in Onondaga County, N. Y. Its purposes are to promote the welfare of members and their employees in a manner consistent with the public interest, to collect and disseminate information bearing on the common problems of members, to inform the community from time to time regarding industrial problems, to promote cooperation between manufacturers and other organizations of the community, and to foster business practices which are fundamental to the American way of life.

Completely autonomous and financed solely by Syracuse area manufacturers who employ 80 percent of our factory people, the Manufacturers Association of Syracuse functions under policies determined democratically by representatives of its member companies, large and small.

Our progressive program in the field of industrial relations and in the overall area of community relations has attracted considerable national attention. We have more than 300 volunteer participants, serving on 30 active committees helping manufacturing management to meet the complex problems of modern industry with emphasis on the Syracuse-Onondaga County, N. Y., area.

As you may know, Onondaga County is 1 of the 33 counties in the entire United States with representation in each of 20 census categories of manufacturing. We go into this background in detail, so that you may understand our tradition of independent and progressive action on what our people believe to be problems affecting the entire Syracuse community. In other words, we take a community approach to many of the controversial problems of the day, and we have an unusual record of cooperation with organized labor in many areas of community activity here.

This community approach has again highlighted our very careful study of the Taft-Hartley law as it now stands. The same careful consideration was given by our association to this problem in 1948 and on subsequent occasions.

We have had the honor of presenting the collective viewpoints of Syracuse industry to your group on several past occasions.

Our basic current study was launched before the November election. A special task committee was named to study specific proposals as they have developed up to the present time. The special task committee reported in turn to our national affairs group, and in turn the report was reviewed by our full Governmental Affairs Committee and then by our Board of Directors. A recommendation of the special task committee was that with so many new factors in the picture the principal points should be given in referendum form to our membership. This has been done, and the observations and recommendations contained herewith thus represent the best judgment of more than 50 companies, large, medium, and small.

OUR BASIC PHILOSOPHY IN LABOR-MANAGEMENT RELATIONS

Our basic philosophy in the area of labor-management relations is our belief in the principle expressed by Senator Irving M. Ives when he wrote his famous New York report on labor-management relationships, as chairman of the New York State Legislative Committee. This principle was that the most successful relationships result from an absolute minimum of governmental interference with free people. In other words, we believe that these fundamental problems eventually must be solved in our local communities. It has been a matter of grave concern to everyone that Federal usurpation of that area has itself created confusion, trouble, and damage, particularly to small and medium-size companies in this area. We think that our position here is supported by statistical evidence showing that before the emphasis on industrywide bargaining and political handling of disputes, we had a phenomenal record of labor-management harmony here. As a matter of record, during World War II and the preceding emergency period we lost only 2 production days because of a strike. Subsequently, however,

the impact of federally controlled labor-management regulations has had a definite effect. In many cases, time has been lost by employees directly and indirectly because of national strike situations. On several occasions our cooperative efforts including the movement of coal from one plant to another have helped to keep some plants open which otherwise would have had to close during national strike emergencies. The important thing, however, is the demonstrated waste in terms of lost production and payrolls here resulting from removal of the collective bargaining process from the community to remote points of decision. We are sure that you are even more aware of the resulting frustration and damage than are we.

In our committee discussions of some of the problems we made no effort to cover the waterfront. The committee itself and our membership by referendum requested that we concentrate on a few of the points now in controversy. Neither did we specifically take up some of the many bills before your committee. Therefore, we respectfully submit our following recommendations in terms of general principles in which we are interested. It may interest you to know that the Syracuse Chamber of Commerce unanimously endorsed the position that we have taken. These recommendations follow:

1. The non-Communist affidavit

We agree with many members of your committee that there are many unsatisfactory things about the present law. Since 1948 we have been on record as favoring the extensions of the affidavit to management. We reiterate our willingness, and respectfully suggest that your committee in final legislation make the oath truly effective by requiring that it be taken by all levels of management and labor participating in the bargaining process; let it be made to cover past and present. We have had experience here in Syracuse with this oath as your files will disclose in my testimony before your honorable committee on February 23, 1949 (re Precision Castings Co.).

2. Reorganization of the National Labor Relations Board

We think strongly that the National Labor Relations Board should be enlarged and made bipartisan in order to bring about both more objective and speedier review of pending cases. Either your honorable body or other agency, however, should work for as much decentralization of responsibility to the States as possible in order to cut down Federal intervention.

3. Economic strikers voting in NLRB elections

We think that the best interests of both workers and management, as components of the public, require a continuation of the ban on replaced economic strikers voting in National Labor Relations Board elections. Our thinking is that a free labor market is necessarily fluid. Therefore, an election can be valid only if it includes the current employees. But in any case we think that no former employee should be permitted to vote if the election is called after 30 days.

4. Secondary-boycott provision

We think that your committee can perform a valuable service by certain clarifications. Senator Taft's proposal to eliminate inequities and loopholes is sound and will eliminate many unjust tactics in connection with unfair organizing efforts. In short, we think that the strength of the secondary-boycott provision is of the utmost importance to us as a community with a constantly growing interdependence among our 435 manufacturing plants.

5. Need for maintaining strict neutrality by NLRB

We strongly oppose some suggestions to speed up work of the NLRB by removing the ban on prehearing elections and recommendations of hearing officers. We believe that hearing officers, at all costs, must maintain strict neutrality and be required to submit objective facts without recommendations.

6. Redefinition of "supervisor"

Our own experience shows a wide range of definition for the term "supervisor." We are for your efforts to redefine the law so that only those who are part of management will be excluded from the bargaining unit. The need for several safeguards occurs to us, but we are confident that these can be worked out with the splendid technical assistance available to your committee.

7. *Wildcat strikes*

We strongly disagree with the proposal given your committee to remove the penalty (lack of reinstatement rights) from employees who strike during the 60-day notice period. Considerable care should be exercised in this field, because we think that the need from our community experience is to develop increased responsibility for mature unions. Removal of the penalty would definitely encourage wildcat strikes.

8. *Clarify the relations between NLRB and its General Counsel*

We consider this important. But we strongly emphasize the need for complete separation of the judicial and prosecuting divisions of the NLRB or whatever successor agency is developed by Congress. We think the General Counsel should be responsible only to the President.

9. *Welfare fund regulations*

Our community experience shows the need to extend to all fund of this type the same impartial audit now required of industry in many instances. We think that the welfare fund regulations should not be subjected to the supervision of the Secretary of Labor but to an impartial board.

10. *Strikes and injunctions*

As stated earlier, the Manufacturers Association of Syracuse believes in the minimum of governmental intervention. But our feeling in a grassroots community is that the Taft-Hartley law was not given a chance by the previous administration. We, therefore, recommend that the public interest requires continuance of the right of injunction, with adequate safeguards for its fair use.

11. *Union security*

The Manufacturers Association of Syracuse has stated repeatedly and publicly its willingness to defend the right to join unions, but it has called attention repeatedly to another right—the right not to join. This is a fundamental American concept. We are opposed to going any further in providing for enforced union membership. We think that your honorable committee has a great opportunity to make a contribution for the maintenance and perpetuation of the rights of individual employees.

12. *Craft units*

Tied in with the above opinion is our belief that an individual employee should have a free choice as to the type of union representation he wants, and we respectfully urge protection for craft units.

13. *Clarification of employer free speech*

It has become trite to refer to "employer free speech," but this is one of the real safeguards of American freedom. We see a need for clarification. We realize that pressures are being brought on your honorable group for regulations to require an employer to permit use of his premises in union organizing campaigns. It is beside the point that some employers will permit this practice anyway, having fine relationships with their own unions. Making this mandatory would be a grave violation of human liberty.

14. *Factfinding boards*

Our opinion is that the collective bargaining process has been seriously weakened by political use of so-called factfinding boards on labor-management relationships. We think the danger to collective bargaining is extraordinary and grave, and we respectfully suggest that your committee insist that the Government return to its original role and function through Federal Mediation and Conciliation Service; or, better still, work with a plan for the resumption by the States of a heavy share of this responsibility.

15. *Union monopolies*

The membership of our association includes branch plants of 14 national corporations, and there is some difference of opinion concerning the rightness and wrongness of certain phases of industrywide bargaining. But there is complete unanimity in our feeling that the growth of monopolistic power by unions creates a grave necessity for that type of regulation to which business itself has long been subjected. We respectfully caution against overemphasis of either smallness or bigness of either unions or companies. Size certainly is not indication of an organization's being good or bad, but we feel that at the grass-

roots the present trend unless checked definitely sometime will lead to combinations of power which can completely enslave our free Government.

These recommendations are presented in a constructive spirit. We regret that we were unable to deliver this matter personally, so that you might have the opportunity to ask questions, but we fully understand the reasons and we congratulate you on the valuable pattern of your hearings, and on the hard unsung work you are doing in this delicate and highly controversial field.

MEMORANDUM SUBMITTED BY THE AMERICAN JEWISH CONGRESS, 15 EAST 84 STREET,
NEW YORK 28, N. Y.

ANALYSIS OF PROPOSED AMENDMENTS TO LABOR-MANAGEMENT RELATIONS ACT PROHIBITING DISCRIMINATION BY EMPLOYERS AND LABOR UNIONS BECAUSE OF RACE, RELIGION, COLOR, NATIONAL ORIGIN, OR ANCESTRY

Proposals to amend the Labor-Management Relations (Taft-Hartley) Act to prohibit racial and religious discrimination by employers and unions have been made by Senator Ives and by the American Jewish Congress. While designed to achieve the same purpose, the proposals differ in certain respects which we shall discuss briefly here. (We have already submitted to the Senate Committee on Labor and Public Welfare a memorandum containing the terms of and arguments for our proposals.)

1. *Representation proceedings*—The Taft-Hartley Act provides for two separate kinds of administrative proceedings before the National Labor Relations Board. One is designed to prevent and remedy certain illegal practices, defined as unfair labor practices in section 8. The other, provided for in section 9, empowers the Board to hold elections to determine what union, if any, represents a majority of the employees in an appropriate bargaining unit.

Both the Ives and the AJC proposed amendments would amend section 8 to make discrimination by employers and labor unions an unfair labor practice. The Board would have power to prevent such discrimination in the same way that it moves against the practices already condemned by the act. The Ives proposal would, in addition, amend section 9 of the act. It is the Board's practice not to conduct elections under that section at the request of one union if another union has recently been certified in an earlier proceeding or if a valid contract between the employer and a union is in effect. The Ives proposal would provide that neither a certification nor a contract may bar the holding of a representation proceeding if the union that has been certified or has made the contract has thereafter engaged in racial or religious discrimination.

We do not believe that this provision is desirable. Representation proceedings under section 9 have been kept simple and nonadversary in nature so that the uncertainties caused by a dispute about employee representatives can be settled as soon as possible. No direct appeal to the courts from Board decisions in such case is allowed. If charges of racial or religious discrimination were heard in representation proceedings, they would be unduly prolonged. Moreover, it would probably be necessary to permit appeals to the courts where a finding of discrimination was made.

The Board does not now permit charges of unfair labor practices to be heard in section 9 proceedings. We believe the same rule should apply if racial discrimination is added to the list of unfair labor practices. Charges of such discrimination would then be heard exclusively in section 8 proceedings, ending in an enforceable Board order where the charges were sustained.

2. *Scope of the prohibition of discrimination*—The American Jewish Congress proposal would generally prohibit discrimination by employers and unions subject to the act. The Ives proposal would have the same effect as to unions. As to employers, however, the Ives proposal would prohibit only discrimination against union members or against employees who are covered by union contracts or otherwise represented by unions. It would thus exclude unorganized plants and parts of plants.

We believe that the prohibition of discrimination by employers should not be limited in this fashion. The limitation is not needed to keep the proposed amendments within the framework of the act. As we noted in the memorandum accompanying our proposed amendments, they are designed to achieve more fully the purpose of the act, the reduction of industrial unrest. Discrimination against racial and religious groups tends to cause such unrest, whether or not the employees affected are organized in unions.

3. *Exemption for religious institutions.*—Our proposed amendments contain a proviso permitting religious and denominational institutions to restrict employment to or prefer members of their own denomination. This clause is customary in statutes prohibiting discrimination on account of religion. The present act applies to religious institutions when their operations affect interstate commerce, for example, when they sell or distribute religious books across State lines. Hence, if the act is amended to forbid religious discrimination, a proviso such as the one suggested should be included.

1. *Introduction*

The American Jewish Congress is an organization of American Jews committed to the preservation of Jewish values and the defense of civil rights. It is dedicated to the belief that in a democracy the rights of each group can be preserved only by preserving the rights of all.

We here propose amendments to the Labor-Management Relations Act which we regard as necessary to protect American principles of equality of opportunity for all. We do so in the belief that discrimination and segregation by employers or labor unions on grounds of race, religion, color, national origin, or ancestry deprive the Nation of the abilities and capacities of large groups in its population at a time when maximum use of our economic and manpower resources is crucial to American survival. We share the view of the President's Committee on Civil Rights that economic discrimination against minority groups constitutes a continuing drain on our economy. As the committee stated in its report, *To Secure These Rights* (p. 141):

"Discrimination depresses the wages and income of minority groups. As a result, their purchasing power is curtailed and markets are reduced. Reduced markets result in reduced production. This cuts down employment, which of course means lower wages and still fewer job opportunities. Racial fear, prejudice, and insecurity aggravate the very discrimination in employment which sets the vicious circle in motion."

The statement of the President's Committee is amply borne out by a recent report prepared by the United States Bureau of Labor Statistics for a subcommittee of the Senate Committee on Labor and Public Welfare concerning the employment and economic status of Negroes in the United States. Although the report, based chiefly on census data, indicated that Negroes had made economic and social advances since 1940, it showed that during the period from 1947 to 1951 the Negro wage and salary workers earned an average of only 52 percent of what similarly situated white workers received. In 1950 Negro families had an average annual income of only \$1,869, representing only 54 percent of the average income of white families. (See report to the Subcommittee on Labor and Labor-Management Relations of the Committee on Labor and Public Welfare, U. S. Senate, 82d Cong., 2d sess. (1952) on employment and economic status of Negroes in the United States, hereinafter referred to as the BLS report.) The report also indicated that, although there had been progress in equalizing Negro and white employment patterns, the average rate of unemployment for Negroes during the period from 1947 to 1951 was more than 50 percent higher than for whites and that the "highest proportion of Negro workers continues to be found in the lower paying and less skilled occupations such as service workers and laborers. Comparatively low proportions of Negroes are found in professional, technical, managerial, clerical, sales, and craftsman occupations." (See BLS report, p. 15).

2. *Employer discrimination*

Of the large amount of evidence of discrimination by employers we describe below a few examples taken from recent studies. Other evidence is summarized in *Civil Rights in the United States, 1952*, a Balance Sheet of Group Relations, published by the American Jewish Congress and National Association for the Advancement of Colored People (pp. 45-64). A survey of employment patterns in 30 key industrial cities conducted by the Urban League emphasizes the fact that our manpower potential is not being used to the fullest in defense industries and that discrimination by employers against minority groups, notably Negroes, is still widespread. The survey noted:

"Discrimination against Negroes follows a uniform pattern in plants located in northern and southern industrial centers. As the work force expands, a few Negroes have been added to the maintenance and common labor group of workers. Negroes are rarely accepted for inplant training programs in any of the communities studied by league personnel. The employment of Negroes in white-

collar, administrative, and technical jobs in these expanding industries is practically unheard of. In those communities where new plants are being constructed for defense production, it is almost impossible to obtain any statement of policy with respect to the utilization of Negro personnel."

The Urban League concluded: "Unless drastic steps are taken to curtail discriminatory employment practices in the majority of the Nation's industries having defense contracts, there will be very few Negro workers in the manpower mobilization program" (Urban League Report, Discrimination in Defense Hiring, February 5, 1952.)

A Senate report concerning the effects of fair employment practices legislation reported that employment discrimination was rife in San Francisco and Detroit, which have large minority group populations and do not have fair employment practice legislation (staff report to the Subcommittee on Labor and Labor Management Relations of the Committee on Labor and Public Welfare, U. S. Senate, 82d Cong., 2d sess. (1952), on the effects of fair employment legislation in States and municipalities, hereafter referred to as staff report.) The report quotes officials of the San Francisco State Employment Service as expressing the belief that on the basis of actual referrals, 90 percent of the jobs available in the San Francisco area would be found closed to Negroes while 75 percent would be found closed to orientals. (See memorandum to San Francisco Board of Supervisors, Marvin E. Lewis, January 21, 1950, cited in staff report at p. 9.)

The Michigan State Employment Service reported on a review of 2,265 job orders received in three offices. It showed that 55 percent had written specifications excluding nonwhites and that all professional, managerial, clerical, and sales jobs were closed to nonwhites, except in Government, minority group agencies, and a few other places of employment (See report to the Detroit Common Council, December 7, 1951, by Mayor's Interracial Committee, cited in staff report at p. 9.)

The Detroit Interracial Committee stated with respect to Detroit that it found "the evidences of discrimination in employment so patently obvious that an extensive survey to prove its existence would seem unnecessary and wasteful." (See report to the common council, December 7, 1951.)

In Cincinnati, Ohio, a report to the city council concerning racial discrimination in employment in that area by the mayor's friendly relations committee, based on a research study conducted by Dr. Alfred Kuhn, found that in 1952 employment of Negroes in a broad sampling of 294 employers (14,702 jobs) was almost 25 percent below their proportion (10.6 percent of the metropolitan population; that only one-eighth of Cincinnati's industries employ Negroes at a rate approximating their proportion in the population, and that where Negroes are employed they are largely confined to the least desirable types of work. The committee also found that 76 percent of the job orders placed with the Cincinnati office of the Ohio State Employment Service during a 10-week period in 1952 specified "White only," and that there was a virtually complete absence of jobs for qualified Negro secretaries in the files of private employment agencies. The Cincinnati study found that lack of qualification for jobs on the part of Negroes is an important partial cause of the differences in jobs held but could not be regarded as the only answer to the question posed by the differences in types of jobs held by Negroes and whites. The committee thought that employment discrimination itself was an important factor in lack of qualification, killing initiative and incentive to learn (report concerning racial discrimination in employment in the Cincinnati area by the mayor's friendly relations committee, April 1953, pp. 4-5).

The 1952 annual report of the Chicago Bureau on Jewish Employment Problems showed that, for the year ending June 30, 1952, a total of 155 charges of discrimination were received and that 65 percent of the charges were found to be valid. There was compelling evidence of discrimination in the insurance and banking industries and among private employment agencies.

3. Trade-union discrimination

Instances of employer discrimination against minority groups represented by discriminatory job orders and refusals to hire and to promote qualified minority workers find their counterpart in discriminatory trade-union practices. Often, when accused of discrimination, employers attempt to place the blame on union leadership and vice versa. For example, the Cincinnati report already referred to cites instances in which union leaders asked to explain the absence of Negro members, referred to the union's nondiscriminatory policy but argued that the union could not very well have Negro members if there were no Negro employees.

The employer, confronted with the same situation, was often apt to reply that he is perfectly willing to bring in Negro employees, but if he did, a wildcat strike would promptly follow with the union leadership disclaiming responsibility (report concerning racial discrimination in employment in the Cincinnati area, p. 10).

Despite reforms by some trade unions in recent years, union discriminatory practices against racial and religious minorities are still frequent. As of the end of 1945, some 30 international unions consistently practiced discrimination either by excluding minority members through provisions of their bylaws, tacit consent or by confining Negroes to auxiliary locals. As a consequence of the passage of State and municipal fair employment practices acts, experience under Federal fair employment practices procedures, and the creation of a general climate of opinion adverse to discrimination, a number of unions eliminated racial restrictions from their bylaws or made restrictive provisions inoperative in States and cities with FEPC legislation. The CIO constitution states as a basic objective bringing about "the effective organization of the working men and women of America regardless of race, creed, color, or nationality * * *." The AFL has no constitutional antidiscrimination provision but has established such a policy through convention resolutions. Nevertheless, a large number of trade unions on the local level restrict job opportunities for Negroes and in some instances other minority groups. (Bailey, *Organized Labor and Racial Minorities*, *The Annals of the American Academy of Political and Social Science*, March 1951, p. 101)

A recent *Fortune* article summarizes the situation in these words:

"A large number of labor unions do restrict job opportunities for Negroes. Eighteen unions (11 A. F. of L. and 7 independent) exclude Negroes by constitutional provisions, bylaws, or tacit consent. Nine others (7 A. F. of L. and 2 independent) organize Negroes in Jim Crow locals.

"The worst offenders are the four railway brotherhoods and the switchmen's union. Almost as bad are the electrical workers, boilermakers, plumbers, and pipefitters, sheet metalworkers, and asbestos workers (all A. F. of L.), who not only have excluded Negroes but often have overtly prevented them from working in building crafts. The skilled building-trades unions have used their control of apprenticeship to restrict or bar Negroes. The electrical workers and the plumbers have used their control of municipal licensing boards to keep Negro mechanics out of their trade. (In some industrial work situations the electrical workers, the machinists, and the boilermakers have admitted Negroes.)" (Davis, *Negro Employment: A Progress Report*, *Fortune*, July 1952.)

Recent cases in the State and Federal courts challenging discriminatory union practices also bear witness to the presence of discrimination in trade unions. (See *U. S. v. Local No. 74, Lathers Int'l Union of Chicago* (No. 52 CR 331 June 30, 1952 (indictment)); *International Brotherhood of Electrical Workers v. Tulley* (No. 90351, Superior Court, Hartford County, Conn., July 14, 1952); *Railway Mail Association v. Corsi* (326 U. S. 88 (1945)); *James v. Marship Corp* (155 P. 2d 329 (1945)); *Williams v. International Brotherhood of Boilermakers* (165 p. 2d 903 (1946)); *Betts v. Easley* (169 P. 2d 831 (1946)); *Steele v. Louisville & Nashville R. R. Co.* (323 U. S. 192 (1944)); *Tunstall v. Brotherhood of Locomotive Firemen & Enginemen* (323 U. S. 210 (1944)); *Brotherhood of Railway Traumen v. Howard* (343 U. S. 768 (1952)); *Graham v. Brotherhood of Furmen* (338 U. S. 232 (1949)); *Brotherhood of Locomotive Firemen v. Mitchell* (190 F. 2d (5th Cir., 1951)). *Williams v. Yellow Cab Co.* (200 F. 2d (3d Cir., 1952))

Even in those States in which local FEPC laws have required formerly "all white" unions to admit Negro applicants to membership, segregated locals and their attendant inequalities still exist. As late as January 24, 1953, a member of the Massachusetts Commission Against Discrimination called on CIO and AFL union officials in the Boston area to end the practice of segregated locals. He said:

"Discrimination and segregation exists within labor unions in Massachusetts today. * * * The fact that there exists so-called segregated locals of both AFL and CIO unions even here in Boston means that the members of such locals, whether the parent labor organization is to be blamed or not, do not have equal opportunity with the white members" (*Chicago Defender*, Jan. 24, 1953).

4. Existing law

A series of Presidential executive orders, beginning with Executive Order 8802, issued June 25, 1941, have affirmed the policy of the Federal Government that there should be no discrimination in the employment of workers in defense

industries or in Government because of race, creed, color, or national origin. These orders make the inclusion of a nondiscrimination provision mandatory in all contracts and subcontracts executed under the present national defense program. However, the recent report of the President's Committee on Government Contract Compliance, assessing the extent of compliance by defense contractors with these nondiscrimination provisions, concluded that this clause had not been fulfilled on a parity with other contractual clauses and that "effective execution of the nondiscrimination clause has been conspicuously absent" (Equal Economic Opportunity, p. 15). This conclusion is buttressed by the report of the Urban League referred to above. Eight States have legislation prohibiting discrimination on grounds of race, religion, color, national origin, or ancestry by employers and trade unions. These States are: Connecticut (Gen. Stat. (1947), sec. 7400 et seq., and 1951 Supp., ch. 371, sec. 1307b); Massachusetts (Ann. Laws (1946), ch. 151B); New Jersey (Stats. Ann. (1945), ch. 18 25-1 to 18 25-28); New Mexico (Stats. Ann. (1949), 1951 Cum. Supp., sec. 57-1201 et seq.); New York (Exec. Law (1945), secs. 290-301); Oregon (Comp. Laws Ann. (1949), ch. 221, p. 314); Rhode Island (Rhode Island Acts (1949), ch. 2181); Washington (Rev. Code (1949), sec. 49 60 010).

Three States in addition have special statutes penalizing discrimination by trade unions only. These are: Kansas (Gen. Stat. (1941), sec. 44-801 (Labor organizations discriminating or excluding persons because of race or color may not be collective bargaining representatives)); New Hampshire (Rev. Laws. (1947), ch. 212, sec. 216 (clause prohibiting discriminatory qualifications for membership and granting all members equal voting rights required in all labor union contracts)); Pennsylvania (Purdon's Penn. Stats. Ann. (1937), title 43, sec. 2113 (labor union that denies membership because of race, color, creed, or political affiliation denied privileges under State Labor Relations Act)) (See American Jewish Congress, Check List of State Anti-Discrimination and Anti-Bias Laws (1953)).

A brief glance at the list of States with any legislation prohibiting discrimination by employers and/or trade unions reveals that the great majority of the States, many of them highly industrialized, afford the minority worker no protection against discriminatory practices by employers and labor organizations.

Racial and religious discrimination by labor unions has been condemned by the Supreme Court in a series of cases beginning with *Steel v. Louisville and Nashville R. R.* (323 U. S. 192 (1944)), and *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen* (323 U. S. 210 (1944)). The Court there held that a union designated as a bargaining representative under provisions of the Railway Labor Act was required to represent in good faith and without hostile discrimination the Negro employees within its craft, even though it excluded them from membership. Recently the doctrine has been extended to prohibit discrimination by statutory representatives even against employees not within the craft represented by the union. *Brotherhood of Railroad Trainmen v. Howard* (343 U. S. 768 (1952)). Under this doctrine, the Court has enjoined the operation of discriminatory contracts and awarded damages to aggrieved minority employees; e. g., *Graham v. Brotherhood of Firemen* (338 U. S. 232 (1949)); *Brotherhood of Railroad Trainmen v. Howard*, *supra*.

The doctrine of the *Steele* and *Tunstall* cases requiring a union to represent fairly all those for whom it acts is effective in preventing only the most flagrant forms of discrimination. Its prohibition extends only to unions that have statutory authorization under either the Railway Labor Act or the National Labor Relations Act. Some of the larger unions have never needed or desired Government assistance because they are powerful enough to achieve their economic aims without it. Many of these unions practice discrimination. The *Steele* doctrine, moreover, does not require a union to admit minority groups to membership but merely to represent the employees in the bargaining unit fairly, and not to discriminate in their contracts against other employees of the employer on grounds of race. In addition, a recent case, *Williams v. Yellow Cab Co.* (200 F. 2d 302 (3d Cir., 1952)), casts doubt on whether the doctrine of the *Steele* case protects persons who are members of the union which they claim is discriminating against them.

5 The Labor-Management Relations Act

The Labor-Management Relations Act of 1947 in its present form specifically guarantees the right of unions to prescribe their own rules with respect to acquisition or retention of membership (proviso to sec. 8 (b) 1 (A)). However, it does contain some provisions giving a limited amount of protection against discrimination by unions.

First, the act prevents the situation in which an employer is unable to hire minority-group workers because they are excluded from membership in a union with which he has a closed-shop contract. The closed-shop contract, which requires the employer to hire only persons who are already union members, is barred by the act.

Second, the act prevents the discharge of, and also discrimination against, employees because of race under union-shop or other union-security contracts that require employees to become or remain members of a union. Sections 8 (a) 3 (A) and (B) prohibit an employer from discharging or discriminating against an employee because of nonmembership in a union if he has reason to believe membership is not available to the employee on the same terms and conditions generally applicable to other employees. This provision effectively prevents discrimination under union-security contracts against employees barred from union membership on the ground of race, religion, or national origin.

Third, the National Labor Relations Board has stated, in accordance with the doctrine of the *Steele* case, *supra*, that it would deny certification to a union if it appeared that it would not represent minority group employees adequately, and would rescind a certification already granted if such proof of discrimination was made. *Matter of Larus and Bro. Co.* (62 N. L. R. B. 1075 (1945); *Matter of Atlanta Oak Co.* (62 N. L. R. B. 973, 975-6 (1945)). This ruling, originally made under the National Labor Relations Act of 1935, received implied approval in 1947 from the congressional conference committee on the Labor-Management Relations Act (H. Rept. No. 510, 80th Cong., 1st sess., p. 41). However, the ruling has never been actually applied. Moreover, it is of limited value because denial of certification would not afford relief where the discriminating union enjoyed such a dominant position that it did not need to be certified in order to maintain its position as bargaining representative.

The rule of the *Larus* case is also weak because it requires proof of discrimination by the union in carrying out its bargaining functions. Although the Board has expressed doubt as to the ability of a union that excludes Negroes from membership to represent them fairly, it has never denied certification to a union solely because it excludes Negroes or because it segregates them into separate locals. Nor has it made a condition of certification that Negroes or other minority group members be admitted to membership in the union on equal terms with whites. The failure of the Board to do so has been attributed to a "justifiable fear that it has no power to involve itself to this extent in internal union affairs" (65 Harvard L. Rev. 490, 492 (1952), citing *Wallace Corp. v. N. L. R. B.*, 323 U. S. 248, 268 (1944) (dissenting opinion of Jackson, J.); *Larus and Bro. Co.*, 62 N. L. R. B. 1075, 1083 (1945)).

As against these very limited restrictions on discrimination in the act, there are much larger areas that the act does not reach at all. First, employers are entirely free to discriminate in hiring and discharging and in the terms of employment. Second, the minority group worker is totally without recourse in the great number of situations where the union that deals with the employer has achieved its bargaining status without using the statutory certification procedure. Third, the Board cannot order a union to admit persons barred from membership on discriminatory grounds. Thus the minority group employee may be at a disadvantage even where he has obtained employment from the employer and is secure against discharge under a union-security contract and against obvious discrimination by the union in the bargaining process. If he is excluded from membership, he has no opportunity to participate in the affairs of the union that represents him, in the selection of the committees who will negotiate the collective agreements regulating his working conditions, or in the form of the union's contractual demands.

6. Proposed amendments

Fifteen years ago, the United States Supreme Court recognized the vital effect of racial discrimination on the employment relationship. In *New Negro Alliance v. Sanitary Grocery Co.* (303 U. S. 702, 707 (1938)), the Court said:

"The desire for fair and equitable conditions of employment on the part of persons of any race, color, or persuasion, and the removal of discriminations against them by reason of their race and religious beliefs is quite as important to those concerned as fairness and equity in terms and conditions of employment. * * * *Race discrimination by an employer may reasonably be deemed more unfair and less excusable than discrimination against workers on the ground of union affiliation.*" [Italic supplied.]

Since the Federal Government, in the Labor Management Relations Act, has undertaken to regulate some aspects of the employer-employee relationship, it

should not permit that act to serve as a sanction and bulwark for conduct that is abhorrent to our fundamental constitutional guarantees of equality. Both employers and unions are continuing to discriminate against minority group employees under the present law and it is therefore necessary for Congress to insure fair treatment of all employees by legislative enactment.

By such a step we would move more closely toward full attainment of the purposes and policy of the national labor policy. It is the stated purpose of the Labor Management Relations Act to minimize "industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce" and to remedy inequality of bargaining power between employees and employers which tends to aggravate current business depressions, by depressing wage rates and the purchasing power of wage earners. That the paralyzing consequences to interstate commerce which arise from discrimination based on race differ in no material respect from those attributable to union activity was illustrated in such incidents as the Philadelphia transit strike and others caused by racial tension. (See Ross, *All Manner of Men*, p. 96, Reynal & Hitchcock (1948); final report, Fair Employment Practices Committee, p. 14 (1946).) As we have already shown, discrimination is a potent factor in depressing wages and incomes of minority groups and curtailing purchasing power to the detriment of the entire economy.

The amendments to the Labor Management Relations Act that we propose are set out in full in the appendix to this memorandum. They would add four unfair labor practices to the present list. One would prohibit an employer from discriminating against or agreeing to discriminate against any employee or applicant for employment because of race, religion, color, national origin, or ancestry. The second would prevent an employer from getting employees through employment agencies if he knew that they discriminate. (This is a necessary provision to prevent evasion of the act through the use of employment agencies.) The third would make it an unfair labor practice for a union to discriminate, classify, or segregate persons with regard to union membership because of race, religion, color, national origin, or ancestry. The fourth would prohibit a union from putting pressure on an employer to induce him to engage in such discrimination, just as unions are now forbidden to attempt to force employers to discriminate on the basis of union affiliation (sec. 8 (b) (2)). A proviso is added to insure to religious and denominational organizations full freedom to limit employment or give preference to persons of the same religion or denomination.

The policy embodied in these proposed amendments is warmly supported by leaders of the American trade union movement. In fact, representatives of both the AFL and CIO have expressed their support of more far-reaching legislation than that now proposed. (See testimony of Theodore Brown on behalf of A. Philip Randall, president, Brotherhood of Sleeping Car Porters, p. 276; William Oliver, co-director of fair practices antidiscrimination department, UAW-CIO p. 231; Boris Shishkin, economist AFL, p. 264; Al Hartnett, International Union of Electrical, Radio, and Machine Workers, p. 384; in hearings before the Subcommittee on Labor and Labor Management Relations of the Committee of Labor and Public Welfare, U. S. Senate, 82d Cong., 2d sess., on S. 1732 and S. 551, April 7-21, 1952.)

Enlightened employers have also announced their opposition to racial discrimination in employment and their support of measures to end discriminatory practices. (See testimony of Frank M. Folsom, president Radio Corporation of America; Ivan Willis, vice president in charge of Industrial Relations, International Harvester Co.; hearings, pp. 81, 137, cited above.)

The proposed amendments would empower the National Labor Relations Board to halt discrimination by employers or unions through the same procedure it now uses in the case of other unfair labor practices. Upon the filing of a charge of discrimination, the Board would investigate, hold hearings, make appropriate findings and, where discrimination was found, issue an appropriate order. The order could, if necessary, be enforced by a court after full review of the Board's findings and conclusions on the whole record. This is the same procedure that has been followed successfully under the State fair employment laws cited above.

It has sometimes been suggested that an additional sanction should be provided in the case of discrimination by unions. The Board would be directed to withhold certification as exclusive bargaining representative from any union found to be engaging in discrimination. This would be accomplished by appropriate amendments to section 9 of the act. We do not believe this additional sanction is necessary or desirable.

A charge of discrimination should be heard and determined in the same way as any other unfair labor practice charge. Representation proceedings under section 9 of the act might be unduly delayed if they were made into a vehicle for determining such charges. Furthermore, the withholding of certification is too drastic a penalty. A union found to be engaged in discrimination should, like an employer, be ordered to cease and desist and to take necessary remedial steps. It need not be put out of business.

7. Conclusion

The American Jewish Congress urges the enactment of these amendments to the Labor Management Relations Act. They are necessary to give real meaning to the fundamental American principles of equality and to eliminate the social waste caused by racial and religious discrimination in employment relations. The proposed amendments are in accord with the purposes and policy of the National Labor Relations Act. They constitute merely an extension of the general principles already laid down by Congress in drafting that act and by the National Labor Relations Board in implementing it. The amendments use existing Board procedures familiar to employees, trade unions, and employers and do not require the creation of any new agency for their administration. They leave untouched the right of both employers and unions to conduct their own affairs so long as they do not trench upon the individual's right to be free from discrimination because of race, religion, color, national origin, or ancestry. Clearly, at this stage in our national development, neither employers nor trade unions can defend the denial of equal opportunity in our industrial community on grounds as specious as the color of a man's skin, the place in which he worships, or the country of his ancestry.

Congress should act against this evil by legislation that provides effective sanctions and does not rely solely on persuasion and voluntary compliance. Our amendments, therefore, make the sound enforcement provisions of the Labor Management Relations Act applicable to discrimination because of race, religion or ancestry. A law that rests solely on moral suasion tends to lose its force and effectiveness after an initial period of enthusiasm. As the President's Commission on Higher Education said in 1947, in recommending antidiscrimination legislation (Higher Education for American Democracy, p. 27): "When assurance of good conduct in other fields of public concern has not been forthcoming from citizen groups, the passage of laws to enforce good conduct has been the corrective method of a democratic society."

APPENDIX

The amendments to the Labor-Management Relations Act proposed by the American Jewish Congress and discussed in the preceding memorandum would add two additional subsections to section 8 (a), which lists unfair labor practices by employers, and two additional subsections to section 8 (b), which lists unfair labor practices by unions. The text of the proposed additions is as follows:

8 (a) It shall be an unfair labor practice for an employer—

(6) To discriminate or agree to discriminate against any employee or applicant for employment with regard to hire or tenure of employment or any term or condition of employment or to classify or segregate any employee, because of race, religion, color, national origin, or ancestry: *Provided*, That nothing in this Act shall be construed to bar any religious or denominational institution or organization or any organization operated for charitable or educational purposes which is operated, supervised, or controlled by or in connection with a religious organization from limiting employment to or giving preference in employment to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

(7) To use in the hiring or recruitment of persons for employment any employment agency, placement service, training school or center, labor union or other source known to discriminate against or classify or segregate persons because of their race, religion, color, national origin, or ancestry.

8 (b) It shall be an unfair labor practice for a labor organization or its agents—

(7) To discriminate against any member or any application for membership with respect to admission or retention of membership or any other right, privilege, or condition of membership or to classify or segregate any

member or applicant for membership, because of race, religion, color, national origin, or ancestry.

(8) To cause or attempt to cause an employer to discriminate or agree to discriminate against an employee or applicant for employment or to segregate or classify any employee in violation of subsection (a) (6)

NATIONAL MILK PRODUCERS FEDERATION,
Washington, D. C., May 15, 1953.

HON. SAMUEL K. MCCONNELL, JR.,
Chairman, Committee on Education and Labor,
Washington, D. C.

MY DEAR MR. MCCONNELL: The 460,000 dairy farm families, through their dairy cooperatives as members of the National Milk Producers Federation have a continuing interest in labor matters. They have a vital stake in the relationships between labor and management. For many years the voting delegates of our organization have adopted resolutions on this subject. The most recent action was taken at the annual meeting in November 1952, at which time the following resolution was adopted:

"LABOR

"The National Milk Producers Federation recognizes the right of labor to organize in order to bargain collectively for wages, hours, and other working conditions. However, we insist that the rights of all people of our Nation are paramount to those of any segment of our economy. We strongly urge the enactment of legislation prohibiting industrywide bargaining and clearly defining the responsibility of labor unions under the antitrust laws."

The dairy industry is especially sensitive to controversies between labor and management. Milk cows continue to produce, and any interruption in the flow of milk from the producer to the consumer because of labor disputes will immediately bring devastating results affecting both the farmer and the urban housewife.

The technique of secondary boycotts can and has caused havoc in the production and distribution of milk and its products. Prior to the enactment of the Labor Management Relations Act, our dairy farmers were harassed and seriously injured by frequent use of secondary boycotts. The vicious action of certain segments of organized labor aroused the anger of our members to such an extent that we concentrated our energies in legislation proposing to outlaw secondary boycotts. Since the enactment of the Labor Management Relations Act, our dairy farmers and their cooperatives have received some protection against this indefensible technique. The National Milk Producers Federation will vigorously oppose any attempt to relax the present secondary boycott restrictions.

Although there are other issues which are of concern to our members, we will, in order to point up the major issue, confine our statement to secondary boycotts.

We earnestly urge the Congress not to make any changes in the present law relating to this subject.

We will appreciate it if you will incorporate this communication in the report on the hearings in connection with the proposed revisions of the existing law.

Sincerely yours,

CHARLES W. HOLMAN, *Secretary.*

GENERAL ELECTRIC Co.,
570 Lexington Avenue, New York 22, N. Y., May 15, 1953.
HON. SAMUEL K. MCCONNELL, JR.,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN MCCONNELL: I should like to supplement and perhaps clarify one of the answers that I gave to a question asked me when I appeared last week before your committee. The matter to which I refer arose in the course of questions by Congressman Kersten as to the kinds of work upon which employees represented by the UE were employed. In the course of his questions, I was asked whether or not employees represented by the UE did "anything in

connection with atomic energy." My reply was that there was "nothing there" and I then indicated that we were acting pursuant to the directives from the AEC that we not deal with the UE at a specific area, but that the Government certification of the UE continued for all other people in Schenectady (pp. 6716, 6717, typewritten transcript).

We do have some instances in which, with the full knowledge of the Atomic Energy Commission, some subcontracts are let by the Atomic Energy Commission for performance in an area where the employees are represented by the UE. All of the very strict security regulations of the AEC are in effect whenever that is the case. Only those particular employees who have been cleared by the security officers of the AEC are allowed to enter such areas.

This problem, which involves the extent to which some subcontracts can be performed by employees represented by any union expelled from the CIO as Communist dominated, has long been under study by the Atomic Energy Commission. We have cooperated in this study and, in the course of it, made fully known to the Commission the actual situation within our company. As a result, under present directives and instruction of the AEC, the precise situation within our company is that the UE is wholly barred by Government directive from representing employees "at Knolls Atomic Power Laboratory and its associated Government owned, General Electric operated facilities in Schenectady and adjacent communities." On the other hand, and from time to time, some work associated with atomic energy may be contracted by the AEC for performance in bargaining units known to be represented by the UE at locations "other than the Knolls Atomic Power Laboratory and its associated government owned, General Electric operated facilities in Schenectady and adjacent communities." Where this is done, placement of such contracts is in accordance with the specific rules formulated by the Atomic Energy Commission and the work is done in accordance with the strict AEC security regulations.

I overlooked this detail in the course of replying to Congressman Kersten's questions, and desire, in the interest of completeness, to supplement my answer as above. I shall leave it within the discretion of you and your committee as to whether you believe the matter important enough to include as a supplement to our testimony. If you do, I am hereby offering it to you for such purpose.

I wish to thank you again for the privilege and opportunity to appear before your committee, as well as for the courteous consideration offered to our proposals by most of your committee. We sincerely hope that you will find it possible to recommend some form of legislation which will make it possible to settle once and for all the various suspicions, doubts, and allegations which have existed and been made for so long with respect to the Communist domination of unions. Neither we nor other employers of whom we know have any desire to recognize or deal with Communist-dominated labor unions and would welcome any legislation which would make it possible to identify such unions and prevent them from functioning as the representatives of our employees with whom we must now legally deal under the Federal law.

Yours very truly,

L. R. BOULWARE

STATEMENT SUBMITTED BY WILLIAM E G BATTY, SR., SECRETARY-TREASURER, NEW BEDFORD LOOMFIXERS' UNION, 908 PURCHASE STREET, NEW BEDFORD, MASS.

In view of your announced recognition of the desirability of certain modifications of the Labor-Management Act of 1947, and in expectation of the enactment of necessary amendments thereto, the following situation prevalent under the existing law is called to your attention and offered for your consideration.

Section 9 (b) (2) of the Labor-Management Act of 1947 provides that "The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation * * *"

The reasons for this provision, as given by the Senate committee, may be gathered from the following excerpt from the Senate committee report:

"* * * Since the decision in the *American Can* case (13 N. L. R. B. 1252) where the Board refused to permit craft units to be carved out from a broader

bargaining unit already established, the Board, except under unusual circumstances, has virtually compelled skilled artisans to remain parts of a comprehensive plant unit. The committee regards the application of this doctrine as inequitable. *Our bill still leaves to the Board discretion to review all the facts in determining the appropriate unit but it may not decide that any craft unit is inappropriate on the ground that a different unit has been established by a prior Board determination.*" (S. Rept. 105, 80th Cong., p. 12.) [Italics supplied.]

It is respectfully suggested that although section 9 (b) (2) had the salutary effect of destroying the inequitable doctrine of the American Can case, nevertheless it had no effect on the actual inequity * * * resulting from the application of this doctrine. The grant to the Board of discretion in determining the appropriate units for the purpose of assuring to employees the right expressly guaranteed by section 7 of the act merely occasioned the formulation of a new doctrine by the Board to support the same inequitable results. The Board has ruled unanimously that this section does not make craft severance mandatory. The Board has construed section 9 (b) (2) as not limiting its discretion to find a craft unit inappropriate in certain situations, so long as it does not base its finding upon the fact that a different unit had already been established by a prior Board determination. (*National Tube* case, 76 N. L. R. B. 1199)

A fair reading of any number of cases wherein the Board has exercised its function to delineate collective-bargaining units proves conclusively that the standards of appropriateness are so fluid as to permit arbitrary, capricious and discriminatory determinations. The inequity of compelling skilled artisans to remain parts of a comprehensive plant unit still exists. Skilled groups are therefore captive to larger industrial organizations with mass voting power. Destruction of the doctrine of the American Can case has given rise to the doctrine of the *National Tube* case. (See the 14th Annual Report of the NLRB for 1949, pp 31 to 37; 15th Annual Report of the NLRB for 1950, pp 38 to 44; and 16th Annual Report of the NLRB for 1951, pp. 85 to 92.)

It is conceded that in our complex industrial society where organizational patters differ from industry to industry and plant to plant that an appropriate bargaining unit can hardly be ascertained by means of some neat statutory formula (*Mueller Brass Co v. N. L. R. B.*, 180 F. (2) 402). Nevertheless where an assurance of the rights expressly recognized by section 7 of the Labor-Management Act of 1947 is expressly sought to be provided for and where the practice of compelling skilled artisans to remain part of a comprehensive plant unit is soundly considered to be inequitable as a violation of those rights, then American union tradition commands that the challenge be accepted.

The New Bedford loomfixers' union is one of the oldest craft unions in the United States, having been founded and established in 1890. It has enjoyed an uninterrupted existence and has played an honorable and distinguished role in influencing the labor movement of the United States in general, and labor organization in the textile industries in particular. Throughout all of its past affiliations with international, national and local organizations it has always maintained its integrity as a craft union and guarded its prerogative of independent action by providing, in its various contracts of affiliation, for complete and absolute local autonomy.

For over 50 years the loomfixers' union had always bargained for and in behalf of its own members concerning wage scales, workloads, work assignments, seniority rights, and all other matters pertaining to the actual job of loom fixing. Of the approximately 700 members of this union currently employed in associated mills in New Bedford, the preponderant majority have been denied the rights guaranteed by section 7 by the Board's application of the doctrine of the *National Tube* case.

By far the vast majority of the loomfixers currently employed in textile mills in New Bedford have designated the Loomfixers' Union to be their representatives for collective bargaining purposes. But the Board has not seen fit to designate the loom fixers as an appropriate unit for collective bargaining purposes (*In re New Bedford Cotton Manufacturers' Association*, 78 N. L. R. B. No. 40 (1948)) and has refused to issue notice of hearing in a subsequent petition filed by the loomfixers in 1950. (*Hoosac Mills Corp.* case No 1-RC-1683, 1950).

However, the Board has accorded independent bargaining rights to the loomfixers in the Fall River mills (*In re Luther Manufacturing Co.*, 61 N. L. R. B. 358; 63 N. L. R. B. 1105, 1944, 1945). In the body of that decision the Board included gratuitous statement to the effect that the decision is applicable to the Fall River mills only and specifically excluded the New Bedford textile in-

dustry from the purview of the decision. This inequity and injustice is apparent when the observation is made that neither the New Bedford loomfixers nor any portion of the New Bedford textile industry was a party to the Fall River proceeding or participated in it in any way.

The inequity and injustice is more aggravated when the further observation is made that the history of collective bargaining and the pattern established for textile industrial organization over a period of more than 50 years in the city of Fall River (14 miles from New Bedford) and in the city of New Bedford are identical in every respect.

In Fall River and Taunton, Mass., and in Pawtucket, R. I., the loomfixers' unions are independent bargaining units excluded from the regular industrial unit and carry on their collective bargaining functions without any visible harm either to the textile industry or to labor organizations. New Bedford is the only community where the rights of loomfixers to bargain collectively as an independent union are denied. The irony of the matter is that the New Bedford Loomfixers' Union has the longest history of organization and effective collective bargaining for its members of all the communities above mentioned and even fostered organization of the Fall River local. For a clearer picture of the difficulties encountered by the Fall River crafts in their efforts to secure separate representation, see *Collective Bargaining and Craft Unions*, by Edward L. Phillips (1950).

This confusing, and contradictory and inequitable situation is permitted under the present law by virtue of the doctrine of the *National Tube* case (76 N. L. R. B. 1199). The exercise of those rights guaranteed by section 7 of the Labor Management Act of 1947 are subject to the discretion of the Board by virtue of the almost unlimited power conferred upon the Board in its determination of appropriate bargaining units.

The vast majority of men employed in a trade requiring 4 years of specialized training and apprenticeship are denied the right to choose their own bargaining representative, the New Bedford Loomfixers' Union, because the Board does not think it proper and will not concede the craft nature of the work.

To a great extent, however, the Board has recognized the probability of inequities resulting from the exercise of its discretionary, delineatory powers. In the case of *Globe Machine and Stamping Company* (3 N. L. R. B. 294), the Board enunciated the doctrine of allowing interested employees to choose by secret ballot between two equally appropriate units.

This practice of allowing the employees to indicate their preference in a self-determination election is commonly called a Globe election.

"Typically, in a case where a Globe election is directed, the employees in a craft group are afforded the opportunity to indicate that they prefer to be established as a separate bargaining unit, apart from a broader industrial unit in which they would otherwise be included, by voting for the craft union that seeks to represent them separately, as against the industrial union that desires to represent them as part of the broader unit." (14th Annual Report of the National Labor Relations Board for 1949, p. 33, n. 26.) (See further, 14th Annual Report of the NLRB for 1949, pp. 31, 32, 33, 15th Annual Report of the NLRB for 1950, pp. 43, 44; and 16th Annual Report of the NLRB for 1951, p. 92.) It is to be noted that the Board does not always permit such Globe elections. And here again, a fair reading of the cases wherein the desirability of Globe elections was in issue will indicate that the guiding standards of the Board are so fluid as to permit arbitrary, capricious, and discriminatory determinations.

Unless a further obstacle is removed, however, the codification of the doctrine of the Globe case would be as futile as the destruction of the doctrine of the *American Can* case.

As a condition precedent to the consent by the Board to a Globe election it is required not only that the unit be found appropriate, but that it first be a craft. Here again the Board has enumerated such general standards of guidance that a fair reading of the cases will indicate the arbitrary, capricious, and discriminatory findings made thereunder. A truckdriver is considered a craftsman (*Oosaa River Newsprint Co.*, 10-RC-811 et seq.) while a loomfixer is occasionally so designated (16th Annual Report of the NLRB for 1951, p. 88). A loomfixer is a craftsman so long as he practices his skill in Fall River, but should he choose (as they often do) to practice the identical skill in New Bedford he loses the distinction of craft status. Compare *In re New Bedford Cotton Manufacturers' Association*, (78 N. L. R. B. 319) and *In re Luther Manufacturing Co.* (61 N. L. R. B. 358, 63 N. L. R. B. 1105). (See 14th Annual Report of the NLRB for 1949, pp. 31, 32, 33, 34; 15th Annual Report of the NLRB for 1949, pp. 41, 42, 43; 16th Annual Report of the NLRB for 1949, pp. 88, 89, 90.) Conversely, a New Bedford

loomfixer working in a Fall River plant is permitted membership in a certified craft union of his trade

It is respectfully suggested that the enjoyment of the rights mentioned in section 7 of the Labor-Management Act of 1947 should not be made to depend upon such encompassing discretionary powers of the Board.

The following observation is respectfully offered as a guide to the solution.

Section 9 (b) (1) of the Labor-Management Act of 1947 provides as follows:

"The Board shall decide in each case, whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit."

In explanation of this rule with respect to professional employees, the Senate committee made the following statement:

"When Congress passed the National Labor Relations Act, it recognized that the community of interests among members of a skilled craft might be quite different from those of unskilled employees in mass production industry. Although there has been a trend in recent years for manufacturing corporations to employ many professional persons, including architects, engineers, scientists, lawyers, and nurses, no corresponding recognition was given by Congress to their special problems."

In section 2 (12) Congress defined professional employee.

It is submitted that what the considerations afforded professional employees can readily be extended to cover craftsmen.

It is respectfully suggested, therefore, that should your committee be minded to assure to employees the fullest freedom in exercising the rights guaranteed by section 7, that craft units be defined expressly and that they be given the express right to a Globe election as is now afforded professional employees. This amendment would properly delimit the discretionary power of the Board to designate a particular unit as a craft unit, to determine whether or not it is an appropriate unit, and to decide whether or not it is entitled to a Globe election.

The present contract between the New Bedford Cotton Manufacturers' Association (four mills) and the CIO industrial union expired on March 15, 1953. As on several occasions in the past, our union filed a petition for its certification to represent its own membership on January 16, 1953. Almost as of course, the petition was denied, and as you are aware, no appeal could be taken from the denial, and ordinarily, no judicial review was available.

The members of our union are the most expert skilled craftsmen in the textile industry, and in the neighboring city of Fall River are recognized as such and have been so certified by the National Labor Relations Board.

Prior to 1948, our craft union had been denied certification on the ground that prior bargaining history indicated that labor relations had been conducted on an industry-wide basis. Such conclusion was historically and factually untrue, but again, there was no means of appellate review available.

When the Taft-Hartley Act was enacted in 1947, our union took encouragement from the obvious provision inserted therein in section 9 (b) (2) which appeared to confer upon craft unions an opportunity to have the wishes of their membership determined by a so-called Globe election (*Globe Machine Co.* case, 3 N. L. R. B. 294) because section 9 (b) (2) was intended by Congress to overrule the *American can* case (13 N. L. R. B. 1252).

In 1948, however, our hopes in this regard were completely frustrated by a Board finding, obviously intended to circumvent section 9 (b) (2), that our trade loomfixing was not a "craft" (78 N. L. R. B. 319).

The technicalities and complexities of the trade of loom fixing are set out in detail in United States Employment Service Occupational Guide No. 4-16.010 (June 1947), and in Job Descriptions for the Textile Industry, published by the United States Department of Labor (1939) (p. 141). How a skilled trade so described could be termed "noncraft" defies comprehension, yet the Board so found even though it had recognized loom fixers as a craft and so certified them through their own independent union in another textile city only 14 miles away.

Upon this factual background, after denial of our petition this year, we determined to attempt to secure court review upon a constitutional basis on the ground that the Board had been arbitrary and capricious. In substance, the United States District Court for Massachusetts decided (see enclosed copy of

opinion by Ford, J., in *N. B. Loomflowers' Union v. Alpert, Regional Director N. L. R. B. et al*, decided Mar. 2, 1953) that review of the arbitrary determination of the Board in 1948 was precluded because Congress had apparently legislatively refused to authorize direct review of certification questions in passing the Taft-Hartley Act in 1947.

In other words we could not convince the Court that Congress intended, by section 9 (b) (2), to grant to unions like ours the right to a "Globe election," and our citations to the congressional intent reflected in the analysis of section 9 (f) (2) and 9 (f) (3) in the report accompanying H. R. 3020, 80th Congress, and the chapter headed "Reform in Representation Proceedings" in the report accompanying S. 1126 were unavailing.

This letter, therefore, is a crying and desperate appeal in behalf of small, independent unions and prays that they be restored to some semblance of dignity, and we are convinced that our only hope of survival lies in positive, remedial action by the Congress.

We respectfully urge, therefore, that your honorable committee, in whatever draft of amendatory legislation you report, include some language which will secure to small independent unions the right to have the wishes of their membership for collective-bargaining purposes ascertained by fair and democratic methods, i. e., by assuring to such membership, through Board procedures, an opportunity to vote upon the question of inclusion or exclusion in the larger unit, provided, of course, it can submit satisfactory evidence of entitlement thereto in the form of representation cards.

It is suggested that this desirable end be achieved either by conferring the right directly as was proposed in section 9 (f) (2) of H. R. 3020 in the 80th Congress, or by the inclusion of a so-called grandfather clause in the proposed amendments which would restore pioneer craft unions to the status they enjoyed before their members became captive to the mass voting power of industrial unions and subject to annihilation by discriminatory, unappealable, and arbitrary fiat of Board action.

It is further suggested that direct provision for judicial review in certification cases under section 9 be inserted in any proposed amendment somewhat in the same manner as was proposed in section 10 (f) of H. R. 3020 of the 80th Congress.

Proposed language to effectuate the remedies above suggested are submitted herewith, and it is respectfully urged that the proposals be given serious and full consideration by your committee in order that the grave injustice and inequity which have resulted to a minority union may be corrected and the dignity of craft trade unionism may be preserved:

"PROVISION TO INSURE A SO-CALLED GLOBE ELECTION

"Upon application of any interested person or persons alleging that a substantial number of employees so desire, the Board shall provide for a separate ballot for any craft, department, plant, trade, calling, profession, or other distinguishable group within a proposed bargaining unit, and shall exclude from such proposed bargaining unit any such group if less than a majority of the employees in it who cast ballots shall have voted for the representative that the Board shall certify for such unit.

"PROVISION FOR SO-CALLED GRANDFATHER CLAUSE

"Upon application by any union or other distinguishable group of employees which has been in continuous existence as a bona fide employee association since on or before July 5, 1935 (date of enactment of the National Labor Relations Act of 1935), the Board shall provide for a separate ballot for the members of such union or group, and shall exclude from any proposed bargaining unit any such union or group if less than a majority of the employees in it who cast ballots shall have voted for inclusion in it.

"PROVISION FOR JUDICIAL REVIEW

"That section 10 (f) of the Labor-Management Relations Act of 1947 (62 Stat. 991, 29 U. S. C. 160 (f)) be amended by adding the following parenthetical clause after the clause 'final order of the Board': '(including an order or certification under sec. 9)'."

If your committee desires any elaboration on the question of the status of craft unions in the textile industry, I shall be most happy to furnish any further data you may require.

STATEMENT OF THE AMERICAN CIVIL LIBERTIES UNION, SUBMITTED BY IRVING FEMAN, WASHINGTON, D. C., DIRECTOR, 412 FIFTH STREET NW., WASHINGTON, D. C.

The American Civil Liberties Union is a nonpartisan, private organization interested in the defense of the Bill of Rights. Accordingly, throughout its 33-year history, it has supported the right of labor unions, generally, to organize, strike, and peaceably picket, recognizing that such activities were in harmony with the protections of the first amendment and the constitutional guaranties of equality. Similarly, it has endeavored to protect the democratic rights of individual workers within labor unions, as a furtherance of its belief that the individuals' right of free expression must be protected from all oppression, whether by Government or by private groups, and that fair treatment must be fully safeguarded.

In terms of these mentioned interests, the American Civil Liberties Union submits this statement to the Committee on Education and Labor, commenting on recent proposed amendments to the Taft-Hartley Act having civil liberty import.

1. In line with our traditional stand in support of the defense and broadening of free expression in any area, and its belief that employees, as labor unions, should make full use of the rights guaranteed under the first amendment, the American Civil Liberties Union approves the section of S. 655 amending the Taft-Hartley Act enlarging the guaranty of free speech of employers to cover situations in which it has been limited as a basis of setting aside an election conducted under section 9 of the present Taft-Hartley Act. However, the American Civil Liberties Union considers it appropriate to limit employer free speech where it is directed to an employee audience which is truly captive, and the opportunity for fair and equal reply is denied to labor unions.

2. The union is opposed to the section of S. 655 relating to the non-Communist oath. This measure offers an amendment to section 9 (h) of the Taft-Hartley Act adding to the language of the present non-Communist oath that the affiant does not belong to an organization "seeking by force or violence to deny other persons their rights, under the Constitution of the United States." The amendment goes on to define "officers" of labor unions as members of all policy-forming and governing bodies of the labor organization, as well as those designated by the constitution of the labor organization. This amendment, and another extending the affidavit requirements to employers, viz, to "officers" of a corporation, or those "having responsibility for the employer's labor relations," will greatly enlarge the category of affiants.

The American Civil Liberties Union's opposition to these amendments is based primarily on its oft-stated position that loyalty oaths are an abridgment of free expression and association. Safe-guarding the national security is of utmost importance, but, it submits, it can be achieved without sacrifice of the principles which are the backbone of American democracy and our belief in freedom. It further observes that, as experience has shown, such an oath provides no practical mechanism for dealing with the problem of Communist domination of leadership in labor unions. The ACLU is not blind to the threat that Communists and other totalitarians in positions of union leadership present. For this reason, the American Civil Liberties Union has refrained from opposing action by unions barring Communists and other totalitarians from holding union office, although it opposes bans on Communists as members. In a statement adopted April 30, 1951, which held that such a step was not a violation of civil liberties, the ACLU said: "Unions have the right to set up reasonable qualifications for candidates for office. The ACLU will not oppose a determination by a union that disqualifies members of the Communist Party, the KKK, or any Nazi, Fascist, or other totalitarian group as candidates for office, since such persons owe a disciplined obedience to an organization other than the union itself. It was felt that a union might reasonably determine that it was not worth risking the existence and effectiveness of the union, which might be impaired by the election of such persons as officers. Such fear might be justified as a result of the long experience some trade unions have had in those respects."

Moreover, the language in the proposed oath is prohibitively vague under rights guaranteed under our Bill of Rights, and by greatly extending the number of required affiants, would increase the administrative burden of the NLRB to the point that the oath could not be effectively implemented.

It is further submitted that, despite the argument that extending the oath from unions for employers is just and fair, there is not constitutional basis, under *American Communications Association v. Douds* (339 U. S. 383 (1950)), for the extension of the oath to employers and would only compound an existing evil.

3. The American Civil Liberties Union opposes the section of S. 655 removing the requirement of union financial reports. It considers the right to demand an accounting essential to union democracy for the use of the union treasury is one of the critical policies to be governed by the members. The right is more than the right that money not be stolen, it is the right of members that union funds be used for the purpose determined by their vote—their expression of opinion.

4. The American Civil Liberties Union is opposed to the enactment of S. 1254. Without commenting, at this time, on the bill's intent to weed out Communist-dominated unions from sensitive areas, it emphasizes that this bill would deprive union members of their right to organize and bargain collectively under the laws of the United States, no matter in what industries they function, upon a finding that they are Communist-dominated. This is a violation of civil liberties by curbing free speech and association, especially since, by its all-embracing character, there is no reasonable relations to the national security. Moreover, the bill assigns the sins of one or more union leaders upon the entire membership of a union who may be opposed to Communist tyranny, and thus deprives individual workers of their rights as union members.

The definitions of the bill are so broad as to permit stigmatization of a union as a Communist labor representative though, in fact, it may not be Communist-dominated. The bill can thus hurt more persons than those aimed at, including many who are clearly not Communists or Communist sympathizers. Moreover, the holding of views on issues similar to the views of Communist-front organizations is one criterion for determining whether a union is a Communist-labor representative. In addition to presenting a serious threat to freedom of speech and thought, such a provision would label a union on wholly unreasonable grounds, since many Communist-front groups profess the worthiest motives, albeit hypocritically, and a union might be stigmatized as Communist, merely because it supported FEPC, revision of the McCarran immigration law, or Federal aid to education. In addition, several of the procedural safeguards of the McCarran Internal Security Act of 1950 are missing from the bill. It is so loosely drawn that unions may face destruction because of being labeled a Communist-labor representative prior to a hearing and judicial review, the process by which its true nature can be determined in accordance with fair procedures.

PEACE AND INDUSTRIAL RELATIONS COMMITTEE
OF THE FRANCONIA MENNONITE CONFERENCE,
Lansdale, Pa., May 15, 1953.

HON. SAMUEL K. MCCONNELL, JR.,
Committee on Education and Labor, Congress of the United States,
Washington, D. C.

DEAR MR. MCCONNELL: Thank you for your letter of April 28, 1953. I am enclosing a statement which I have written to present our views on labor legislation. We do hope that the present Congress, which is studying this question, will see fit to include in the rewriting of the law such provisions which will not make it necessary for any Christian to violate his own conscience.

I was interested in reading the testimony given by the Plymouth Brethren IV. Their position coincides with the position of the Mennonite Church. There are also other denominations which are in harmony with our position and I believe that just as the Christian conscience against war is recognized, so should also the Christian conscience against union membership be recognized.

May God bless and always direct you in your efforts as a public servant of the people

Most sincerely yours,

JOHN E. LAPP.

STATEMENT OF THE COMMITTEE ON ECONOMIC AND SOCIAL RELATIONS OF THE MENNONITE GENERAL CONFERENCE, THE PEACE AND INDUSTRIAL RELATIONS COMMITTEE OF THE FRANCONIA MENNONITE CONFERENCE AND THE INDUSTRIAL RELATIONS COMMITTEE OF THE LANCASTER MENNONITE CONFERENCE

Gentlemen of the Education and Labor Committee of the House of Representatives: I am John E. Lapp, Mennonite bishop of Lansdale, Pa., speaking in behalf of the peace and industrial relations committee of the Franconia Mennonite

Conference, the industrial relations committee of the Lancaster Mennonite Conference, and the committee on economic and social relations committee of the Mennonite General Conference, representing approximately 60,000 members of the Mennonite faith in the United States.

As students of American history, particularly of the economic development of our Nation, we are fully aware of the problems and injustices which modern industrialization has frequently brought to the laboring man. Believing that these injustices are out of accord with the Christian ethic which we profess to follow, one of our recent official pronouncements expresses a concern:

(1) That our brethren in the operation of their own business organizations seek to enlighten their consciences as to the best type of internal organizations and administration for the maintenance of Christian labor relations, and that they continually seek to improve these relations

(2) That as a brotherhood we continually seek to discover ways and means of bringing the economic life of our brethren more completely into the way of Christian discipleship and Christian stewardship

(3) That business connections be avoided among us which would involve responsibility for unethical practices over which the individual has no control.

(4) That great care be exercised in the investment of capital in large corporations and that this be done only when it is certain that business practices of the corporations, policies with respect to competitors, and its labor policies are such as can be approved by the Christian conscience.

We also believe, however, that the employee, as well as the employer, must in all of his economic relation be governed by the Christian ethic. For this reason the above pronouncement also contains the following statement: While recognizing the benefits which the workers have realized from the efforts of the labor unions, we recognize also that some of the methods employed (by the unions) are not in harmony with Biblical principles, and therefore cannot be endorsed, and should not be participated in by the Christian.

Four specific Bible principles which we as Mennonites seek to uphold and which are violated in certain aspects with membership in labor unions are:

1. The principle of nonresistance, as taught by Jesus in the Sermon on the Mount, Matthew 5:38-48; the same principle is also taught by Paul in Romans 12:19-21 and by Peter in I Peter 2:13-25.

2. The principle of loving one's neighbor, commonly called the Golden Rule as taught by Jesus in Luke 6:31.

3. The principle of separation and the avoiding of being unequally yoked up with unbelievers which is so clearly taught in II Corinthians, chapter 6, verse 14 to chapter 7, verse 1.

4. The principle of signing one's name to allow another person or an organization to become the bargaining agent for one's self, when he doesn't know what the full implications thereof may be.

In recognition of this Christian conscience against participation in union activities involving such methods as the strike, some unions are excusing our people from union membership in cases where they work in shops where the union has the bargaining power. This recognition is generally arrived at through negotiation with the local union, to apply in the local situation. In a few cases there is general recognition by the international union which then applies to all locals of the international. A common feature of these understandings is that the person so recognized pays to some agreed-upon charitable or benevolent fund a sum equivalent to union dues; that he agrees to abide by the rules of the union as to wages, hours, and working conditions; that he will in no way interfere with the work of the union; and that in case of a strike he remain neutral, neither participating in the strike by taking a place in the picket line, nor working against the union as a strikebreaker. On the part of the union it is agreed that the person who because of religious conviction cannot join the union and who complies with the above agreement will be permitted to work without union membership. One local union has gone so far as to provide in its constitution and bylaws for a plan similar to that described above. Another union, in its contract with the company, has agreed that persons with religious convictions against union membership shall not be compelled to join the union.

While a considerable number of unions, by the procedure outlined above, have made it possible for the Christian conscience on this point to be recognized, the majority of the unions have not done so. This means that the Federal labor legislation as it now stands causes some people with a Christian conscience

against union membership to have compulsory union membership thrust upon them. In behalf of these people, therefore, we pray that the Federal labor laws be so modified as not to compel an individual to join the union when the Christian ethic as he understands it, and the faith to which he holds, forbids him to do so.

NATIONAL LABOR RELATIONS BOARD,
Washington 25, D. C., April 29, 1953.

Mr. JOHN O. GRAHAM,
Clerk, *Committee on Education and Labor,*
House of Representatives, Washington 25, D. C.

DEAR MR. GRAHAM: During a recent telephone conversation you made a request for more detailed information than I had earlier submitted in respect of certain classifications of employees of the Board and its General Counsel. In response, I am enclosing two copies of lists indicating the name, present grade, date of employment by the Board, and date of appointment to present position of all chief legal assistants, associate chief legal assistants, regional directors, chief field examiners, chief law officers, and officers in charge. * * *

I hope this information satisfies the request of the chairman as transmitted by you, and please do not hesitate to call upon me for clarification, or for further information, if I can be of assistance.

Very sincerely yours,

WILLIAM R. CONSEDINE,
Associate Solicitor.

Name	Present grade	Board member	Date employed by the Board	Date of appointment to chief legal assistant
CHIEF LEGAL ASSISTANTS				
Bachman, Mervin.....	GS-15.....	Houston.....	May 11, 1942	Aug 22, 1947
Compton, Raymond J.....	GS-15.....	Peterson.....	Mar 14, 1938	Do.
Keulthau, Paul S.....	GS-15.....	Herzog.....	June 15, 1937	Feb 21, 1949
Liblin, Louis.....	GS-15.....	Styles.....	Oct 12, 1937	Aug 22, 1947
McKinley, Robert T.....	GS-15.....	Murdock.....	Sept. 17, 1941	Oct 19, 1947
ASSOCIATE CHIEF LEGAL ASSISTANTS				
Balsinger, William C.....	GS-14.....	Murdock.....	Aug. 8, 1942	Jan. 24, 1951
Cameron, William R.....	GS-14.....	Herzog.....	Mar 22, 1943	Jan 17, 1951
Kuskin, Harry H.....	GS-14.....	Houston.....	Jan 2, 1942	Jan 10, 1951
Platt, Ellhu.....	GS-14.....	Styles.....	Apr 8, 1948	July 9, 1951
Rosenberg, Gilbert V.....	GS-14.....	Peterson.....	Jan 16, 1939	Jan. 10, 1951

Region	Name	Present grade	Location	Date employed by the Board	Date of appointment as regional director
REGIONAL DIRECTORS					
1	Alpert, Bernard S.	GS-15	Boston	Mar. 28, 1938	July 31, 1945
2	Douds, Charles T.	GS-15	New York	May 6, 1937	Sept. 15, 1942
3	Vincent, Merle D.	GS-15	Buffalo	May 9, 1938	July 26, 1948
4	Schauffler, Bennet F.	GS-15	Philadelphia	Aug. 9, 1934	Sept. 24, 1945
5	Penello, John A.	GS-15	Baltimore	Sept. 1, 1937	May 28, 1948
6	Shore, Henry	GS-15	Pittsburgh	Sept. 8, 1937	Sept. 11, 1947
7	Casselman, Harry N.	GS-15	Detroit	Sept. 27, 1937	Apr. 30, 1952
8	Hull, John A.	GS-15	Cleveland	Jan. 19, 1943	July 25, 1948
9	Evans, Jack G.	GS-15	Cincinnati	June 7, 1937	Aug. 25, 1947
10	Getreu, John C.	GS-15	Atlanta	Feb. 11, 1942	Feb. 28, 1950
11	Johnston, Reed	GS-15	Winston-Salem	May 18, 1943	Oct. 15, 1952
13	Madden, Ross M.	GS-15	Chicago	May 8, 1937	Oct. 19, 1942
14	McMahon, V. Lee	GS-15	St. Louis	Jan. 15, 1940	Apr. 23, 1951
15	LeBus, John F.	GS-15	New Orleans	Sept. 7, 1937	July 13, 1942
16	Elliott, Edwin A.	GS-15	Fort Worth	Sept. 16, 1934	Sept. 16, 1934
17	Sperry, Hugh E.	GS-15	Kansas City	July 26, 1937	Jan. 13, 1944
18	Knapp, Charles E.	GS-15	Minneapolis	Sept. 20, 1937	Nov. 4, 1948
19	Graham, Thomas F., Jr.	GS-15	Seattle	June 16, 1937	Apr. 11, 1941
20	Brown, Gerald A.	GS-15	San Francisco	Feb. 16, 1942	Aug. 18, 1947
21	LeBaron, Howard F.	GS-15	Los Angeles	Feb. 7, 1938	Sept. 12, 1942
24	Consentino, Salvatore	GS-15	Santurce, P. R.	Jan. 18, 1943	Feb. 19, 1950
ASSISTANT REGIONAL DIRECTOR					
2	Jaffe, James A.	GS-14	New York	Jan. 12, 1942	Oct. 31, 1948

¹ Date shown is date office designation was changed from subregional office to regional office. Mr. Johnston had been serving as officer in charge since Feb. 4, 1946, and Mr. Consentino as officer in charge since Jan. 8, 1948.

Region	Name	Present grade	Location	Date employed by the Board	Date of appointment as chief field examiner
CHIEF FIELD EXAMINERS					
1	Smith, Raymond J.	GS-13	Boston	Sept. 15, 1937	Oct. 1, 1945
2	Naumoff, Benjamin	GS-13	New York	Nov. 12, 1942	June 20, 1951
3	Irving, John	GS-13	Buffalo	May 15, 1944	Mar. 21, 1950
4	Krivonos, Fred G.	GS-13	Philadelphia	Apr. 16, 1935	Jan. 2, 1946
5	Curry, Eugene A.	GS-13	Baltimore	Jan. 15, 1943	Nov. 30, 1947
6	Borchardt, Howard G.	GS-13	Pittsburgh	Apr. 1, 1946	Apr. 8, 1953
7	Pearl, Cecil	GS-13	Detroit	Nov. 16, 1942	May 7, 1951
8	Finlay, David C.	GS-13	Cleveland	Nov. 20, 1942	Oct. 19, 1947
9	Hicks, James B.	GS-13	Cincinnati	Jan. 9, 1946	Oct. 29, 1950
10	Thomas, John W.	GS-13	Atlanta	Jan. 16, 1945	June 24, 1949
11	Summers, Harold X.	GS-13	Winston-Salem	Dec. 22, 1941	Jan. 27, 1953
13	Schneid, Martin H.	GS-13	Chicago	Oct. 8, 1942	Feb. 20, 1951
14	Dick, George M.	GS-13	St. Louis	July 26, 1948	Apr. 12, 1953
15	Cassidy, Paul A.	GS-13	New Orleans	Jan. 19, 1948	Aug. 10, 1952
16	Russell, H. Carme	GS-13	Fort Worth	Apr. 26, 1941	Nov. 3, 1946
17	Slater, Cyrus A.	GS-13	Kansas City	July 1, 1937	Oct. 31, 1948
18	Bruce, Douglas A.	GS-13	Minneapolis	Feb. 4, 1942	Do.
19	McCliskey, Kenneth	GS-13	Seattle	Sept. 13, 1937	Do.
20	Hoffman, Roy O.	GS-13	San Francisco	Jan. 26, 1942	Aug. 23, 1948
21	Yager, George A.	GS-13	Los Angeles	Sept. 20, 1937	Oct. 13, 1947
24	Romero, Francisco	GS-13	Santurce, P. R.	June 16, 1943	Apr. 7, 1952

Region	Name	Present grade	Location	Date employed by the Board	Date of appointment as Chief Law Officer
CHIEF LAW OFFICERS					
1	Greene, Robert	GS-14	Boston	Mar. 8, 1938	Apr. 23, 1951
2	Cuneo, John J.	GS-14	New York	Sept. 8, 1941	Apr. 12, 1951
3	Ramsey, Thomas H.	GS-14	Buffalo	Feb. 23, 1938	Apr. 6, 1951
4	Donovan, Ramey	GS-14	Philadelphia	Feb. 1, 1939	Oct. 26, 1948
5	Sachs, David C.	GS-14	Baltimore	Feb. 12, 1940	Dec. 10, 1947
6	Sherman, Stuart	GS-14	Pittsburgh	Oct. 13, 1937	Nov. 3, 1947
7	Little, William	GS-14	Detroit	July 1, 1939	July 7, 1952
8	Fusco, Phillip	GS-14	Cleveland	Aug. 27, 1947	June 26, 1949
9	Brooks, Jerome H.	GS-14	Cincinnati	Nov. 5, 1941	Dec. 15, 1952
10	Pate, William M.	GS-14	Atlanta	Mar. 25, 1942	July 9, 1950
11	Barban, Sidney J.	GS-14	Winston-Salem	Jan. 17, 1944	Oct. 15, 1952
13	Ackerberg, Robert E.	GS-14	Chicago	Oct. 14, 1941	Aug. 16, 1948
14	Carlson, Harry G.	GS-14	St. Louis	June 2, 1941	Nov. 28, 1948
15	Keenan, Richard C.	GS-14	New Orleans	Nov. 24, 1947	Feb. 1, 1950
16	Davis, Elmer P.	GS-14	Fort Worth	May 31, 1937	Jan. 1, 1942
17	Fousek, Robert S.	GS-14	Kansas City	June 30, 1941	July 1, 1944
18	Meter, Clarence A.	GS-14	Minneapolis	June 15, 1942	Nov. 30, 1947
19	Walker, Patrick H.	GS-14	Seattle	Sept. 20, 1937	Sept. 21, 1947
20	Penfield, Louis S.	GS-14	San Francisco	Dec. 29, 1939	Jan. 13, 1946
21	Hackler, Charles K.	GS-14	Los Angeles	Feb. 16, 1942	Nov. 18, 1943
24	Weasler, George L.	GS-14	Santurce, P. R.	Nov. 5, 1942	Mar. 15, 1950

Sub-region	Name	Present grade	Location	Date employed by the Board	Date of appointment as officer in charge
OFFICERS IN CHARGE					
8-35	Volger, F. Robert	GS-14	Indianapolis	Feb. 16, 1942	Apr. 5, 1948
8-32	Sabella, Anthony J.	GS-14	Memphis	July 14, 1947	Oct. 1, 1950
8-22	Hudson, Harold L.	GS-14	El Paso	Jan. 15, 1942	Mar. 24, 1953
8-39	Potter, Clifford	GS-14	Houston	Feb. 26, 1940	Sept. 8, 1948
8-30	Waers, Clyde F.	GS-14	Denver	Jan. 17, 1940	Oct. 9, 1947
8-36	Wiener, Robert J.	GS-14	Portland	Aug. 13, 1934	Oct. 7, 1947
8-37	Wills, Arnold L.	GS-14	Honolulu	Mar. 10, 1938	Feb. 1, 1942